



FRESNO METROPOLITAN FLOOD CONTROL DISTRICT

File 170.604
210.83

April 27, 2012

Mr. Murray Peters
Project Management Team – Third Party Manager
California High-Speed Rail Authority
770 L Street, Suite 800
Sacramento, CA 95814

Dear Mr. Peters,

Subjects: 1) **Verification of existing facilities within project limits**
 2) **Establishing District Occupancy Rights to the location**

The District has completed the review of the Contract Packages 1A, 1B and 1C provided by Tony Valdez in PDF formatting on April 18, 2012 and have the following comments to offer.

In regards to completeness and accuracy of District facilities depicted on the CHSRP plans comments have been broken down to the individual packages.

Contract Package 1A:

The District facilities shown at the following locations need to be revised as noted:

- Roadway, Grading and Drainage Plan – SR99 Re-alignment, Drawing NO CV-G1018-R99, and the existing 18-inch diameter pipe is located within the street right of way in Woodson Avenue not in the side slope of fill for Ashlan Avenue as shown.
- Utilities, Composite Utility Plan, Drawing NO. UT-C4017, the existing 18-inch diameter pipe is located within the street right of way in Woodson Avenue not as (FUT) 18-inch SD (NIC) in the side slope of fill for Ashlan Avenue as shown.
- Utilities, Composite Utility Plan, Drawing NO. UT-C4028 and C4029, the (FUT) 36-inch SD (NIC) will be located within the Bullard Avenue right of way per standards of the City of Fresno and the District, not as shown between approximately Stations 130+00 and 120+00.
- Utilities, Composite Utility Plan, Drawing NO. UT-C4028, and several additional sheets NW Avenue shall be revised to N. West Avenue.
- Utilities, Grading and Drainage Plan, Drawing NO. CV-G1006, same comment as Composite Utility Plan, Drawing NO UT-C4017

Mr. Murray Peters

April 27, 2012

Page 2

Further comments on the proposed basin expansions, HST storm drain collection system connections, storm drain pipe extensions, realignments or relocations and related easement requirements will need to be addressed with the future review of the individual plans for the storm drainage pipe. Some of the proposed connections of storm pipe lines from the HST and Union Pacific Railroad to the District facilities have not been included in the design of the Master Plan drainage system and will need to be reviewed for service availability. In addition drainage fees will need to be revised to include this additional area.

Contract Package 1B:

- Utilities, Composite Utility Plan, Drawing NO. UT-C4055, in Utility Information NO. 1, the storm drain pipe size is 36-inch, not 72-inch.
- Utilities, Composite Utility Plan, Drawing NO. UT-C4057, in Utility Information NO. 15, the storm drain pipe size is 30-inch and 18-inch, the pipe exists and is not FUTURE (BY OTHERS). There also appears to be a short run of 18-inch pipe in Ventura Avenue that is not shown correctly please refer to attached copy of plans for reference.
- Utilities, Grading and Drainage Plan, Drawing NO. CV-G1015, the pipe identified as EXIST 98-inch RCP (FMFCD) is 96-inch.
- Utilities, Grading and Drainage Plan, Drawing NO. CV-G1016, the pipe identified as EXIST 54-inch RCP (FMFCD) is 42-inch.
- Utilities, Grading and Drainage Plan, Drawing NO. CV-G1017, the pipe identified as PROPOSED SD LINE (BY OTHERS) does exist per the attached plan (II₁-123-3).

Contract Package 1C:

There are no District facilities depicted on this set of plans therefor no verification of accuracy could be made at this time.

In regards to the Occupancy Rights, the District has provided the deeds, easements and agreements that are available from records kept here at the District as attachments to this letter. If there are any questions comments or concerns contact the District at (559) 456-3292.

Very truly yours,

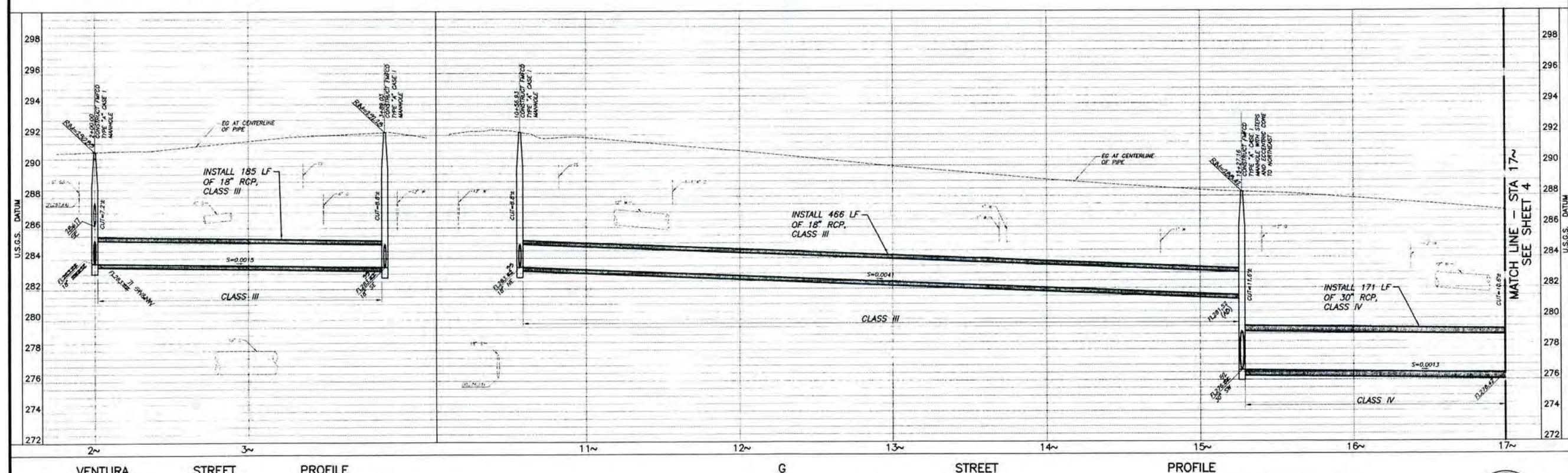
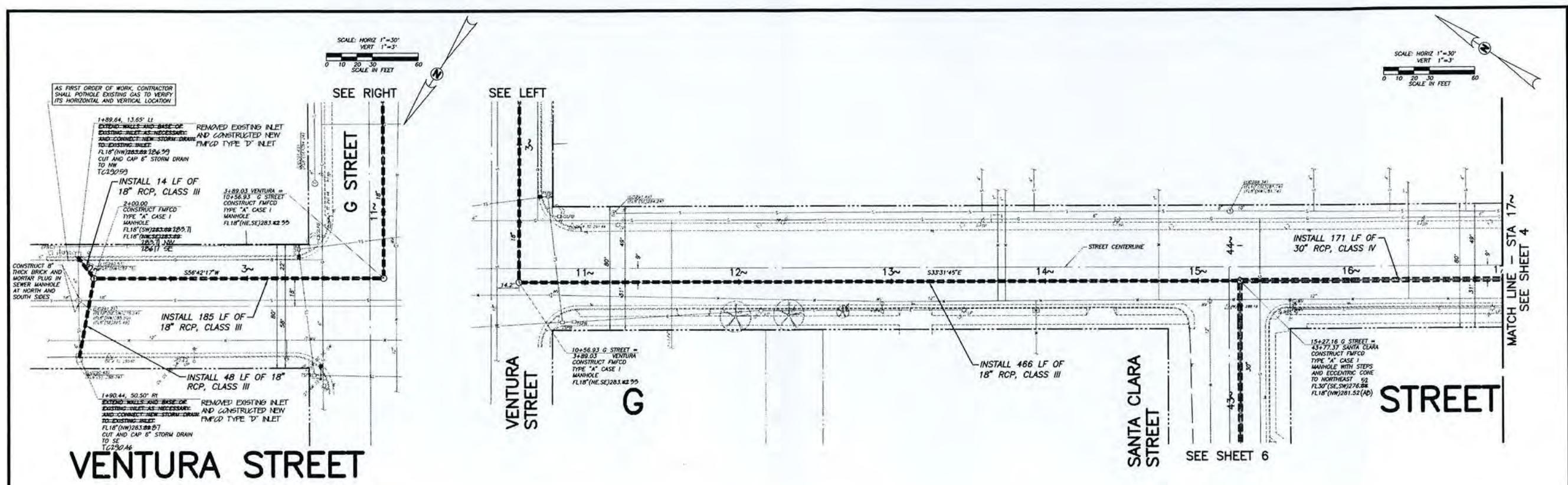


Mark Will
Engineer III, R.C.E.

MW/lrl

Attachment(s)

k:\ca high speed rail(hsr)\file 170.604\peters-verify existing facilities-occup rights.docx



FRESNO METROPOLITAN FLOOD CONTROL DISTRICT

Blair,Church Flynn

455 Olive Avenue, Suite 200 • Clovis, California 93612 • Tel: (559) 326-1400 • Fax: (559) 326-1500

DRAWN BY: *[Signature]* DATE: 02-28-11
CHECKED BY: *[Signature]* DATE: 02-28-11
SCALE: 1:2000' REV: 23 JUN 04

RECORD DRAWING
BLAIR CHURCH & FLYNN
DATE: 11-11-2011



DATE: 02-28-11

PLAN AND PROFILE - STA 2~ TO 17~
DESIGN ENGINEER: KARL E. KIENOW

SHEET 3
OF 8
DRAWING NO.
II1-123-3

NEW

DOCUMENT

RFP No.: HSR 11-16
CONTRACT PACKAGE 1A
North of Veterans Blvd to North of Stanislaus St

ATTACHMENT No. 1, PAGE 1 OF 6

Drawing NO. UT-C4001

1) 24-inch diameter Storm drain north of Herndon to Kathryn Avenue (approx. Sta.111+00) located within existing Street Right of Way (Herndon Avenue)

2) 24-inch diameter Storm drain south side and parallel to Herndon Avenue (approx. Sta.121+00) located within Existing easement COPY A attached (Burger Duo Property II Doc No. 96151905)

Drawing NO. UT-C4003

3) Basin "EH" Grant Deed COPY B1 and B2 attached (Doc No. 94147277) and 54-inch diameter Storm drain located in existing Street Right of Way (Golden State)

Drawing NO. UT-C4003

4) 36-inch diameter Storm drain (approx. Sta.141+00) located within the existing Street Right of Way and Basin "EH" (Golden State)

ATTACHMENT No. 1, PAGE 2 OF 6

Drawing NO. CV-G1002

5) 24-inch diameter Storm drain (approx. Sta. S10592+00) located in existing Street Right of Way (Golden State)

Drawing NO. CV-G1003

6) 60-inch diameter Storm drain (approx. Sta. S10618+00) located in existing Street Right of Way (Cornelia and Golden State)

Drawing NO. CV-G1003

7) 18-inch diameter Storm drain (approx. Sta. S10635+00) located in existing Street Right of Way (Golden State)

Drawing NO. CV-G1004

8) 42-inch diameter Storm drain (approx. Sta. S10647+00) located in existing Street Right of Way (Golden State) and Union Pacific Crossing Agreement COPY C attached (Audit 251776)

ATTACHMENT No. 1, PAGE 3 OF 6

Drawing NO. CV-G1005

9) 24-inch diameter Storm drain (approx. Sta. S10681+00 thru S10695+00) located in existing Street Right of Way (Golden State)

Drawing NO. CV-G1006

10) 18-inch diameter Storm drain located in existing Street Right of Way (Golden State)

ATTACHMENT No. 1, PAGE 4 OF 6

Drawing NO. CV-G1011

- 11) 30-inch diameter Storm drain (approx. Sta. S10840+05) located in existing Street Right of Way and Southern Pacific Transportation Company agreement COPY D attached (Lease Audit Number 189216)

ATTACHMENT No. 1, PAGE 5 OF 6

Drawing NO. CV-G1012

- 12) 42-inch diameter Storm drain crossing (approx. Sta. S10875+00) located in existing Street Right of Way (Olive Avenue), 18-inch and 15-inch parallel located in existing Street Right of Way (Golden State)

ATTACHMENT No. 1, PAGE 6 OF 6

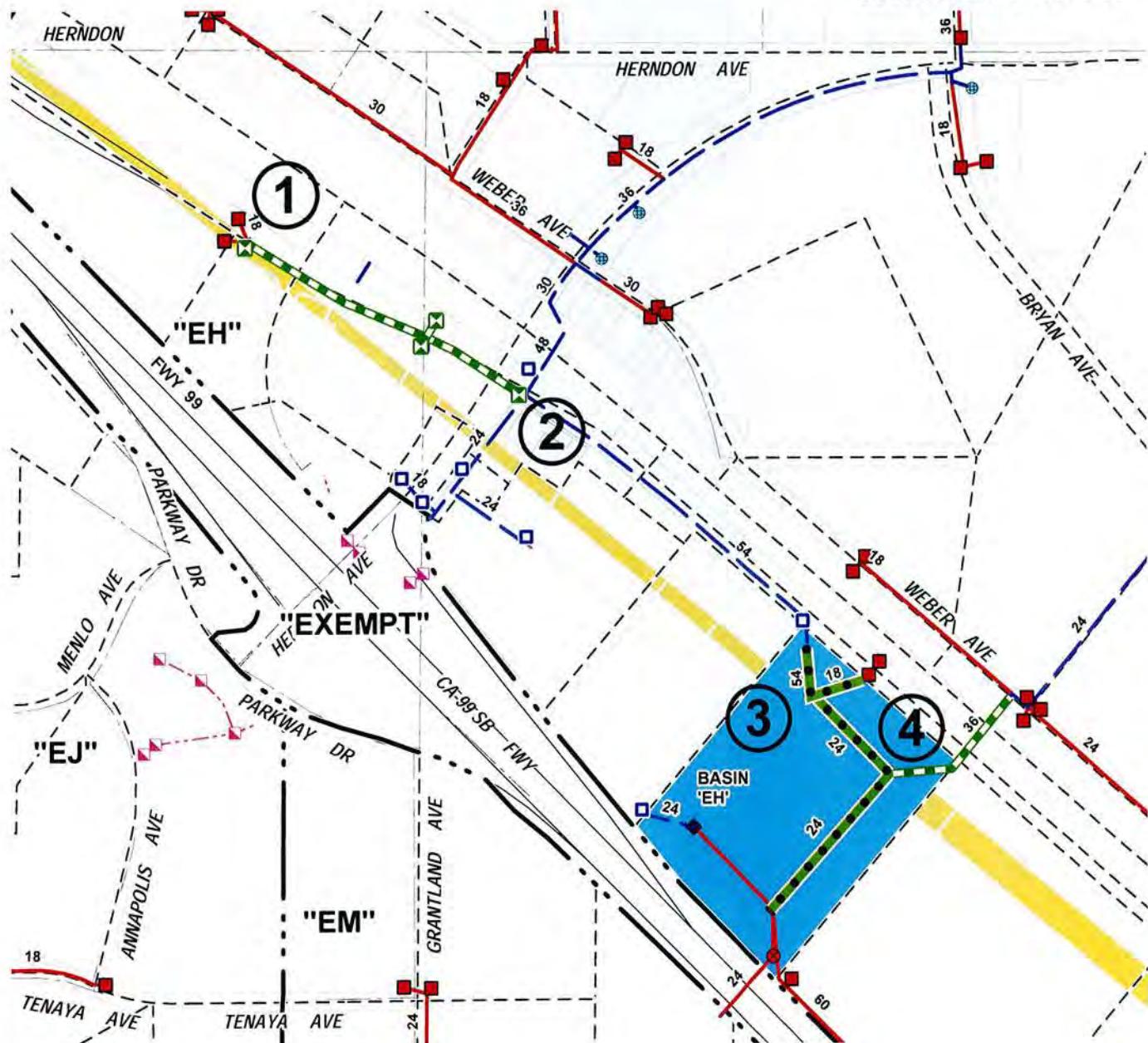
Drawing NO. CV-G1013

- 13) 96-inch diameter Storm drain (approx. Sta. S10913+00) located in existing Basin Property COPY E1 and E2 attached, and Union Pacific Railroad Company agreement COPY F attached (Lease Audit Number 221470)

Drawing NO. CV-G1014

- 14) 60-inch diameter Storm Drain (approx. Sta. S10940+00) located in existing Union Pacific Railroad Company agreement COPY G attached (Lease Audit Number 221580)

NOTE:
THIS MAP IS SCHEMATIC
DISTANCES ARE APPROXIMATE.



LEGEND

- Master Plan Facilities To Be Constructed By High Speed Train
-Pipeline (Size Shown) & Inlet.
- Existing Facilities To Be Protected Or Relocated
- Existing Master Plan Facilities
- Future Master Plan Facilities
- - - - Inlet Boundary
- - - - Drainage Area Boundary
- High Speed Train Right Of Way



1 " = 500'

HIGH SPEED TRAIN DRAINAGE AREAS "EH"

ATTACHMENT No. 1
PAGE 1 OF 6



FRESNO METROPOLITAN FLOOD CONTROL DISTRICT

Prepared by: wadet

Date: 4/26/2012

Path: K:\Autocad\DWGS\0EXHIBIT\HighSpeedRail\Attachment 1-3\1-1.mxd

NOTE:
THIS MAP IS SCHEMATIC
DISTANCES ARE APPROXIMATE.



LEGEND

- Master Plan Facilities To Be Constructed By High Speed Train
-Pipeline (Size Shown) & Inlet.
- Existing Facilities To Be Protected Or Relocated
- Existing Master Plan Facilities
- Future Master Plan Facilities
- - - Inlet Boundary
- - - Drainage Area Boundary
- ↑ Major Storm Flow Path
- High Speed Train Right Of Way



1 " = 800'

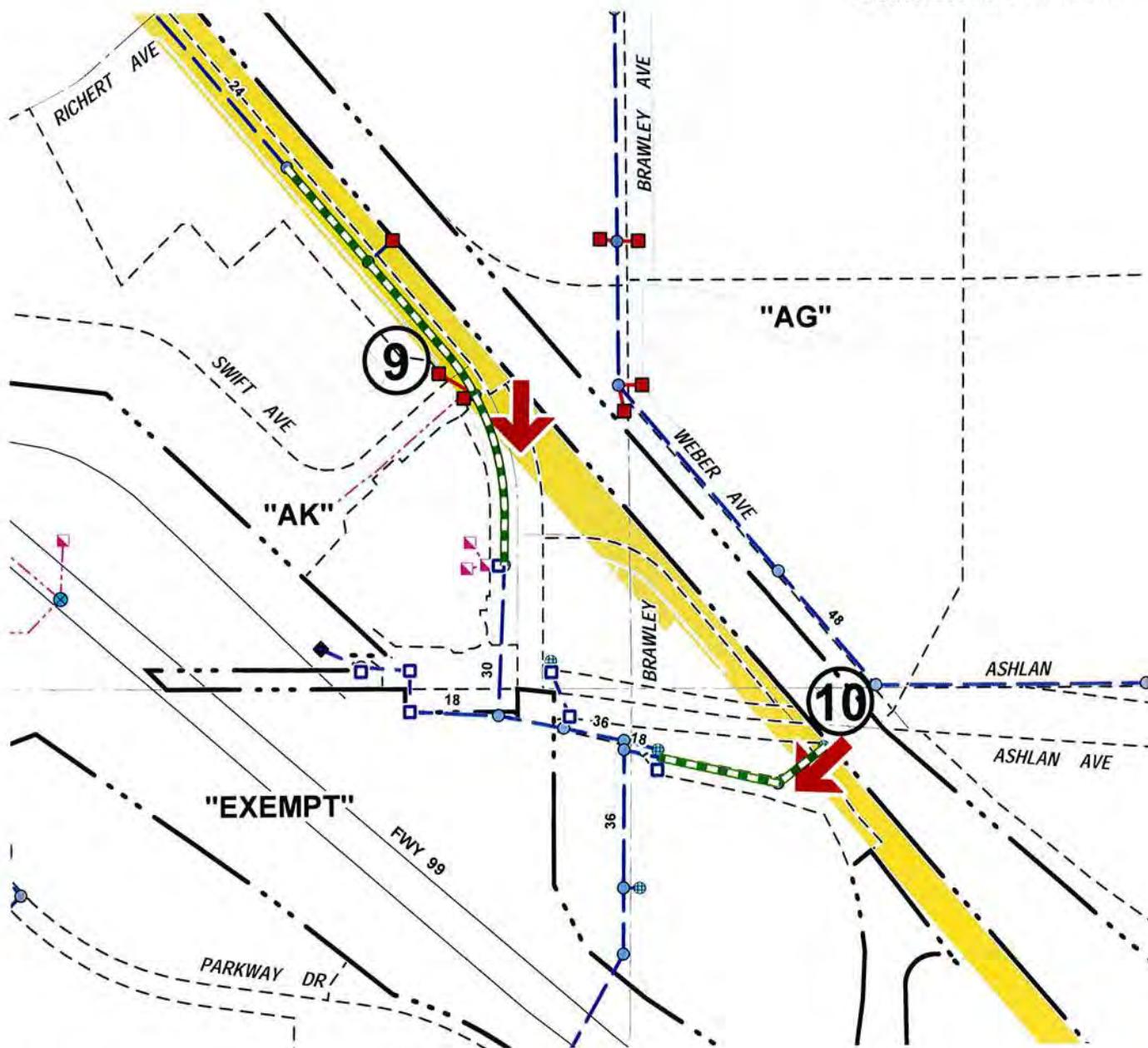
HIGH SPEED TRAIN
DRAINAGE AREAS "EL" & "AH"

ATTACHMENT No. 1
PAGE 2 OF 6



FRESNO METROPOLITAN FLOOD CONTROL DISTRICT

NOTE:
THIS MAP IS SCHEMATIC
DISTANCES ARE APPROXIMATE.



LEGEND

- [Dashed Green Line] Existing Facilities To Be Protected Or Relocated
- [Blue Dashed Line] Existing Master Plan Facilities
- [Red Dashed Line] Future Master Plan Facilities
- [Dashed Line] Inlet Boundary
- [Dashed Line] Drainage Area Boundary
- [Red Arrow] Major Storm Flow Path
- [Yellow Bar] High Speed Train Right Of Way



1 " = 300'

HIGH SPEED TRAIN
DRAINAGE AREA "AK"

ATTACHMENT No. 1
PAGE 3 OF 6



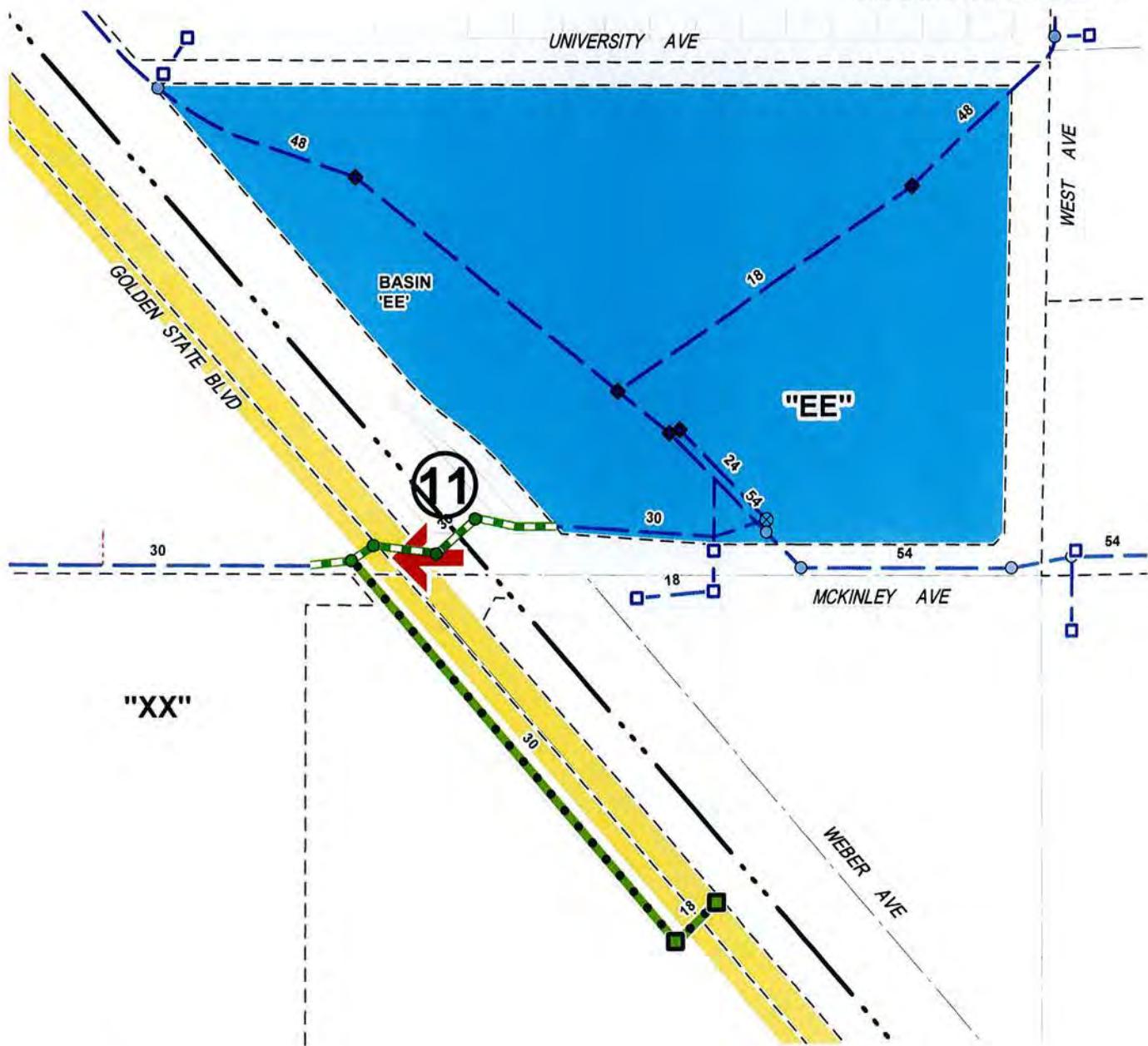
FRESNO METROPOLITAN FLOOD CONTROL DISTRICT

Prepared by: wadet

Date: 4/26/2012

Path: K:\Autocad\DWGS\0\EXHIBIT\HighSpeedRail\Attachment 1-3\1-3.mxd

NOTE:
THIS MAP IS SCHEMATIC
DISTANCES ARE APPROXIMATE.



LEGEND

- - Pipeline (Size Shown) & Inlet.
- ☒ - Existing Facilities To Be Protected Or Relocated
- - Existing Master Plan Facilities
- - - - Inlet Boundary
- - - - Drainage Area Boundary
- ↑ - Major Storm Flow Path
- Yellow Bar - High Speed Train Right Of Way



1 " = 200'

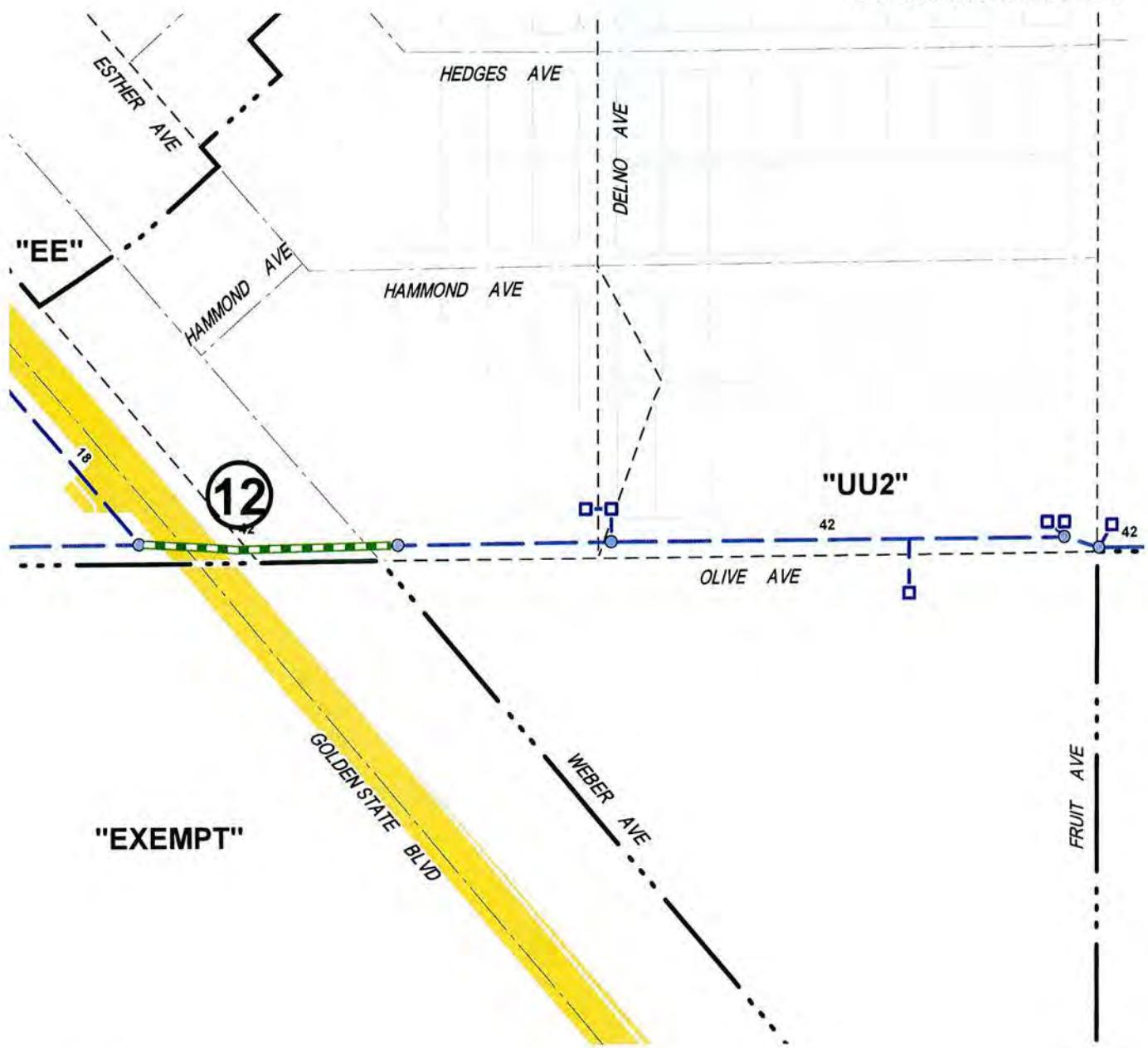
HIGH SPEED TRAIN
DRAINAGE AREAS "EE" & "XX"

ATTACHMENT No. 1
PAGE 4 OF 6



FRESNO METROPOLITAN FLOOD CONTROL DISTRICT

NOTE:
THIS MAP IS SCHEMATIC
DISTANCES ARE APPROXIMATE.



LEGEND

- Existing Facilities To Be Protected Or Relocated
- Existing Master Plan Facilities
- Inlet Boundary
- Drainage Area Boundary
- High Speed Train Right Of Way



1 " = 200'

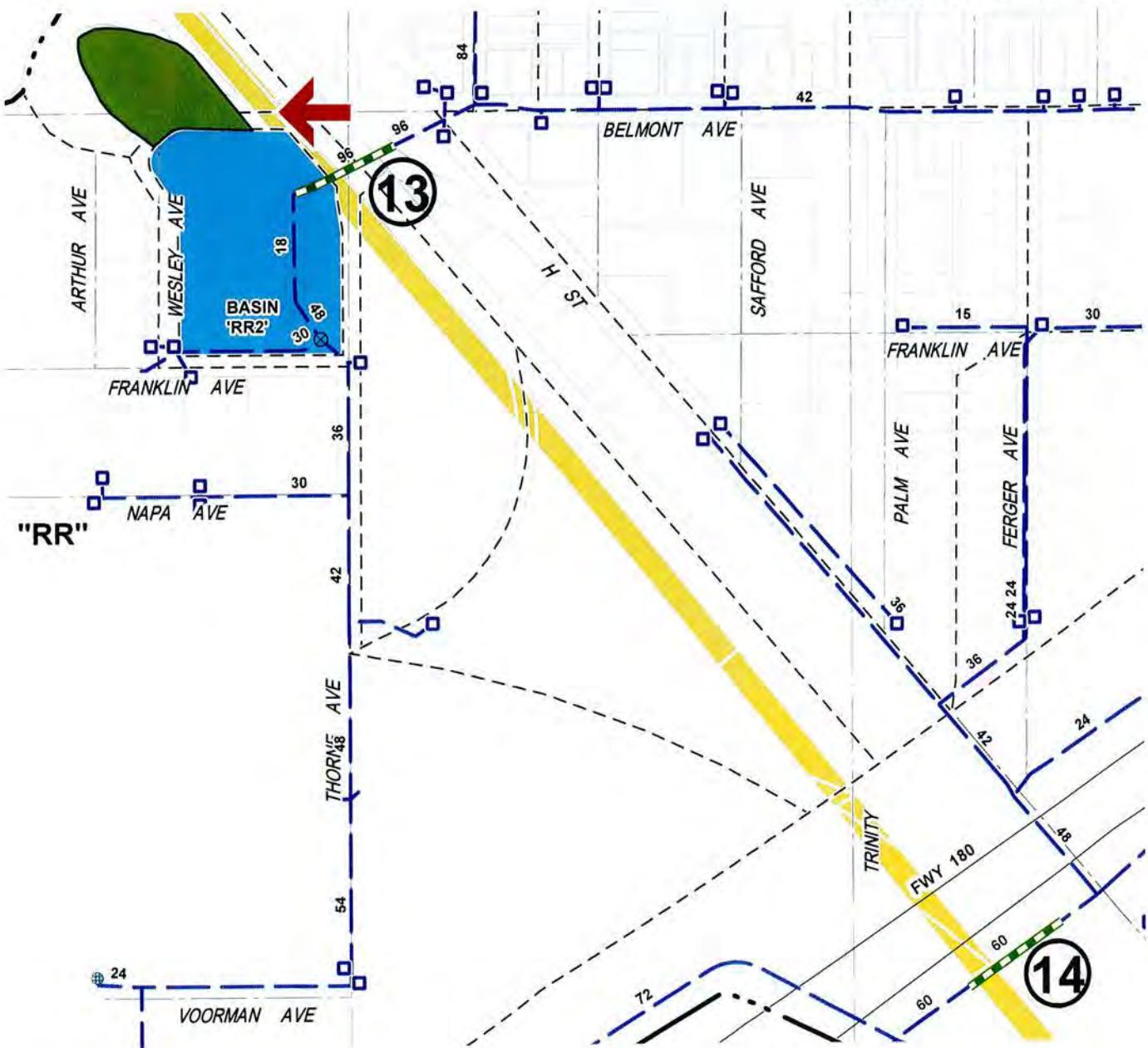
HIGH SPEED TRAIN
DRAINAGE AREA "UU2"

ATTACHMENT No. 1
PAGE 5 OF 6



FRESNO METROPOLITAN FLOOD CONTROL DISTRICT

NOTE:
THIS MAP IS SCHEMATIC
DISTANCES ARE APPROXIMATE.



LEGEND

- Existing Facilities To Be Protected Or Relocated
- Existing Master Plan Facilities
- Inlet Boundary
- Drainage Area Boundary
- Major Storm Flow Path
- High Speed Train Right Of Way
- Expansion Of Basin RR2 By High Speed Train



1 " = 400'

HIGH SPEED TRAIN
DRAINAGE AREA "RR"

ATTACHMENT No. 1
PAGE 6 OF 6



FRESNO METROPOLITAN FLOOD CONTROL DISTRICT

Prepared by: wadet

Date: 4/26/2012

Path: K:\Autocad\DWGS\0EXHIBIT\HighSpeedRail\Attachment 1-3\1-6.mxd

NEW

DOCUMENT

96151905

"ET"

(A)

RECORDING REQUESTED BY:
FRESNO METROPOLITAN FLOOD
CONTROL DISTRICT

RECORDED IN OFFICIAL RECORDS OF
FRESNO COUNTY, CALIFORNIA
AT MIN PAST 9A M

AND WHEN RECORDED, MAIL TO:

FRESNO METROPOLITAN FLOOD
CONTROL DISTRICT
5469 E. Olive Avenue
Fresno, California 93727

NOV 12 1996

FRESNO COUNTY, CALIFORNIA
WILLIAM C. GREENWOOD, County Recorder
JODI CAMP
BY DEPUTY RECORDER

FEE
\$

GRANT OF PIPELINE/ACCESS EASEMENT AND RIGHT OF WAY

THIS INDENTURE, made and entered into this A day of

November 1996 by and between _____

Burger Duo Property II, LLC

as

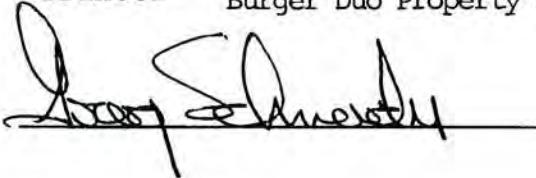
Grantor, and FRESNO METROPOLITAN FLOOD CONTROL DISTRICT, a public corporation in the County of Fresno, State of California, as Grantee;

W I T N E S S E T H:

That Grantors, for good and valuable consideration do hereby grant to Grantee the perpetual and exclusive right and easement to construct, install, operate, maintain, repair, and reconstruct a pipeline, and to flow and conduct water through said pipeline, across, over, through, and under that real property owned by Grantor in the County of Fresno, State of California, described in Exhibit "A" attached hereto, together with the perpetual right of ingress and egress across said real property described in Exhibit "A" hereto.

IN WITNESS WHEREOF, Grantors have executed this grant the
day and year first above written.

"Grantor" Burger Duo Property II, LLC



11/4/96

DATE

DATE

2

EXHIBIT "A"

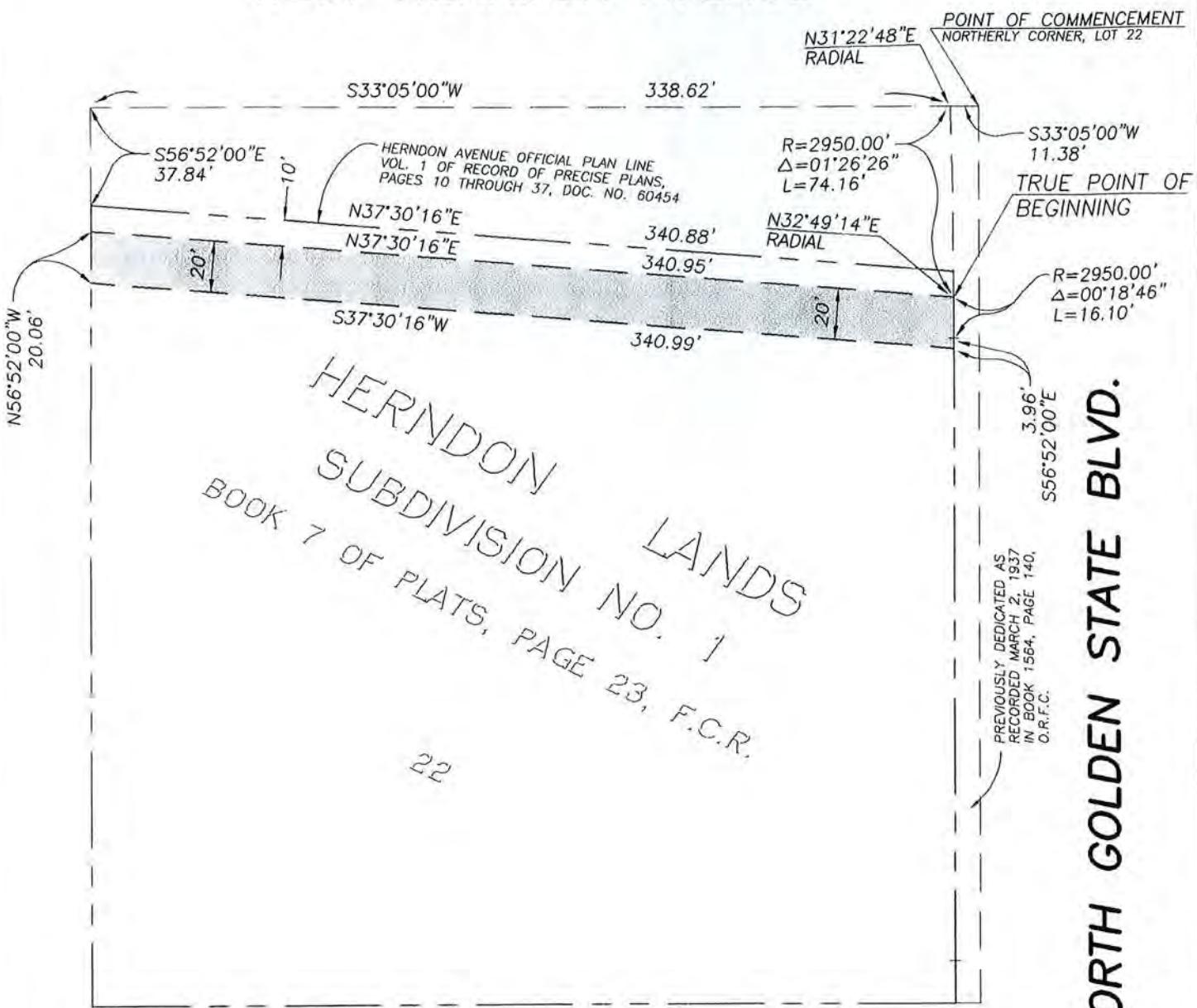
THAT PORTION OF LOT 22 OF THE MAP OF HERNDON LANDS, SUBDIVISION NO. 1 AS RECORDED IN BOOK 7 OF PLATS, PAGE 23, FRESNO COUNTY RECORDS, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE MOST NORTHERLY CORNER OF SAID LOT 22, THENCE SOUTH $33^{\circ}05'00''$ WEST ALONG THE NORTHWESTERLY LINE OF SAID LOT 22 A DISTANCE OF 11.38 FEET TO A POINT ON THE SOUTHWESTERLY LINE OF NORTH GOLDEN STATE BOULEVARD AS PREVIOUSLY DEDICATED BY INSTRUMENT NO. 6083, RECORDED MARCH 2, 1937, IN BOOK 1564, PAGE 140, OFFICIAL RECORDS FRESNO COUNTY, SAID POINT BEING ON A NON-TANGENT CURVE CONCAVE SOUTHWESTERLY WHOSE RADIUS POINT BEARS SOUTH $31^{\circ}22'48''$ WEST A DISTANCE OF 2950.00 FEET; THENCE SOUTHEASTERLY, ALONG SAID CURVE AND ALONG SAID SOUTHWESTERLY LINE OF GOLDEN STATE BOULEVARD, THROUGH AN INTERIOR ANGLE OF $1^{\circ}26'26''$, AN ARC DISTANCE OF 74.16 FEET TO THE TRUE POINT OF BEGINNING OF THIS DESCRIPTION; THENCE CONTINUING SOUTHEASTERLY ALONG SAID CURVE AND ALONG SAID SOUTHWESTERLY LINE OF GOLDEN STATE BOULEVARD, THROUGH AN INTERIOR ANGLE OF $0^{\circ}18'46''$, AN ARC DISTANCE OF 16.10 FEET; THENCE CONTINUING ALONG SAID SOUTHWESTERLY LINE OF GOLDEN STATE BOULEVARD, SOUTH $56^{\circ}52'00''$ EAST A DISTANCE OF 3.96 FEET; THENCE SOUTH $37^{\circ}30'16''$ WEST A DISTANCE OF 340.99 FEET; THENCE NORTH $56^{\circ}52'00''$ WEST A DISTANCE OF 20.06 FEET; THENCE NORTH $37^{\circ}30'16''$ EAST, A DISTANCE OF 340.95 FEET TO THE TRUE POINT OF BEGINNING.

CONTAINING 0.1565 ACRES, MORE OR LESS.



WEST HERNDON AVENUE



PORTION OF LOT 22
HERNDON LANDS SUBDIVISION NO. 1
TO BE GRANTED TO
FRESNO METROPOLITAN FLOOD CONTROL DISTRICT



RABE
ENGINEERING, INC.
2021 N. GATEWAY BLVD. FRESNO, CA 93727
(209) 252-7223 FAX (209) 252-4746

BY	JBP/LAP	DATE	10/30/96
FIELD BOOK	PAGE	JOB NO.	96-005

FMFCD/277

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of Fresno

On 11-4-96 before me,

Name and Title of Officer (e.g., "Jane Doe, Notary Public")

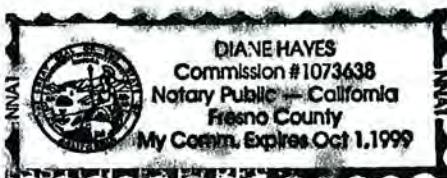
Date

Diane Hayes

personally appeared Gregory C. Schneider,
Name(s) of Signer(s)

personally known to me - OR - proved to me on the basis of satisfactory evidence to be the person(s), whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.



OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: Grant of Pipeline Access easement
Right of Way
Document Date: 11-4-96 Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

- Individual
- Corporate Officer
- Title(s): _____
- Partner — Limited General
- Attorney-in-Fact
- Trustee
- Guardian or Conservator
- Other: _____

Signer Is Representing:

Signer's Name: _____

- Individual
- Corporate Officer
- Title(s): _____
- Partner — Limited General
- Attorney-in-Fact
- Trustee
- Guardian or Conservator
- Other: _____

Signer Is Representing:

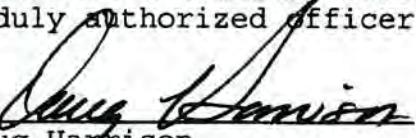
RIGHT THUMPRINT OF SIGNER
Top of thumb here

RIGHT THUMPRINT OF SIGNER
Top of thumb here

CERTIFICATE OF ACCEPTANCE

In accordance with the provisions of 27281 of the Government Code of the State of California, this is to certify that the interest in real property conveyed by the attached instrument, dated **November 4, 1996**, from **Burger Duo Property II, LLC** to the Fresno Metropolitan Flood Control District, a public corporation, is hereby accepted by the undersigned General Manager-Secretary on behalf of the Board of Directors of the Fresno Metropolitan Flood Control District, pursuant to authority conferred by Resolution No. 1464 of said Board of Directors adopted December 13, 1988, and said District hereby consents to recordation thereof by and through its duly authorized officer.

Dated: November 5, 1996

By: 
Doug Harrison
General Manager-Secretary

NEW

DOCUMENT

94147277

CENTRAL TITLE COMPANY

(B1)

RECORDING REQUESTED BY

Gary Newmark

FRESNO METROPOLITAN FLOOD CONTROL

DISTRICT

And When Recorded Mail This Deed and, Unless
Otherwise Shown Below, Mail Tax Statements To:

NAME Gary Newmark
 STREET ADDRESS FRESNO METROPOLITAN FLOOD
 CONTROL DISTRICT
 CITY, STATE 5469 East Olive Avenue
 ZIP Fresno, California 93727
 Title Order No. Re: Basin "EH"/Kndl Co.
 Escrow No. _____

RECORDED IN OFFICIAL RECORDS OF
FRESNO COUNTY, CALIFORNIA
AT MIN. PAST M

SEP 20 1994

WILLIAM C. GREENWOOD
County RecorderFEE
\$

SPACE ABOVE THIS LINE FOR RECORDER'S USE

NONE.

DOCUMENTARY TRANSFER TAX X
 COMPUTED ON FULL VALUE OF PROPERTY CONVEYED,
 OR COMPUTED ON FULL VALUE LESS LIENS AND
 ENCUMBRANCES REMAINING AT TIME OF SALE
 CENTRAL TITLE COMPANY - Ram A

Signature of Declarant or Agent determining tax. Firm Name

GRANT DEED

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,
 KANDL COMPANY, INC., a California corporation

hereby GRANT(S) to

FRESNO METROPOLITAN FLOOD CONTROL DISTRICT, a California public
corporation

the following described real property in the
county of Fresno, state of California:

SEE EXHIBIT "A" ATTACHED HERETO AND INCORPORATED
HEREIN BY THIS REFERENCE

KANDL COMPANY, INC.,
a California corporation

Dated August 17, 1994

COUNTY OF ,
 On this day of the year
 , before me, the undersigned Notary Public in
 and for said County and State, personally appeared

personally known to me (or proved to me on the basis of satisfactory
 evidence) to be the person whose name
 subscribed to the within instrument and
 acknowledged that executed the
 same.

Signature

Name (Typed or Printed)
 Notary Public in and for said County and State

(Space above for official notarial seal)

MAIL TAX STATEMENTS TO PARTY SHOWN ON FOLLOWING LINE; IF NO PARTY SO SHOWN, MAIL AS DIRECTED ABOVE

Name

Street Address

City & State

March 26, 1993

FRESNO METROPOLITAN FLOOD CONTROL DISTRICT
BASIN EH ACQUISITION

ASSESSOR'S PARCEL NUMBER: 305-100-47

RECORD OWNER: Kandi Company, Inc.
6725 North Motel Drive
Fresno, California 93711

AREA OF PROPOSED ACQUISITION: 7.970± Acres

LEGAL DESCRIPTION FOR PROPOSED BASIN EH:

Lot 713 of J. C. Forkner Fig Gardens Subdivision No. 7, in the City of Fresno, County of Fresno, State of California, according to the map thereof recorded in Book 10, Page 17 of Plats, Fresno County Records.

Excepting that portion described as follows:

Beginning at the most Southerly corner of said lot, said most Southerly corner being at Coordinates Y = 545793.815 feet and X = 1732977.221 feet; thence, (1), along the Southeasterly line of said lot, North 40°31'54" East, 60.39 feet to a line parallel with and 92 feet Northeasterly, measured a right angles, from the Department of Public Works' survey from Princeton Avenue to Madera County line Road VI-Fre 4-C; thence, (2), along said parallel line, North 44°45' West, 159.08 feet; thence, (3), North 39°19' West, 235.14 feet to the Northwesterly line of said lot; thence, (4), along said Northwesterly line, South 40°31'54" West, 114.92 feet to the Northeasterly line of Huntington Avenue; thence, (5), along said Northeasterly line, South 49°38'06" East, 390.00 feet to the point of beginning.

Also excepting the Northeasterly 30 feet thereof.



Exhibit "A"

ALL-PURPOSE ACKNOWLEDGMENT

State of California

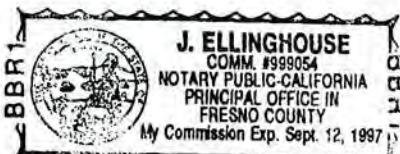
County of Fresno

On 8/23/94 before me, Jenny Ellinghouse
DATE NAME, TITLE OF OFFICER, E.G. "JANE DOE, NOTARY PUBLIC"

personally appeared Conrad Klein
NAME(S) OF SIGNER(S)

personally known to me - OR - proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS MY HAND AND OFFICIAL SEAL.




SIGNATURE OF NOTARY

CAPACITY CLAIMED BY SIGNER

- INDIVIDUAL(S)
 CORPORATE
OFFICERS President
TITLE(S)
 PARTNERS
 ATTORNEY-IN-FACT
 TRUSTEE(S)
 SUBSCRIBING WITNESS
 GUARDIAN/CONSERVATOR
 OTHER: _____

SIGNER IS REPRESENTING:

NAME OF PERSON(S) OR ENTITY(IES)

THIS CERTIFICATE
MUST BE ATTACHED
TO THE DOCUMENT
DESCRIBED AT RIGHT:

Title or Type of Document Grant Deed
Number of Pages 8 Date of Document _____
Signer(s) Other Than Named Above _____



3

CERTIFICATE OF ACCEPTANCE

In accordance with the provisions of 27281 of the Government Code of the State of California, this is to certify that the interest in real property conveyed by the attached instrument dated August 17, 1994 19 , from KANDL COMPANY, INC., a California corporation to the Fresno Metropolitan Flood Control District, a public corporation, is hereby accepted by the undersigned Assistant General Manager on behalf of the Board of Directors of the Fresno Metropolitan Flood Control District, pursuant to authority conferred by Resolution No. 1464 of said Board of Directors adopted December 13, 1988, and said District hereby consents to recordation thereof by and through its duly authorized officer.

Dated: September 13, 1994 By: Bob Van Wyk
Bob Van Wyk
Assistant General Manager

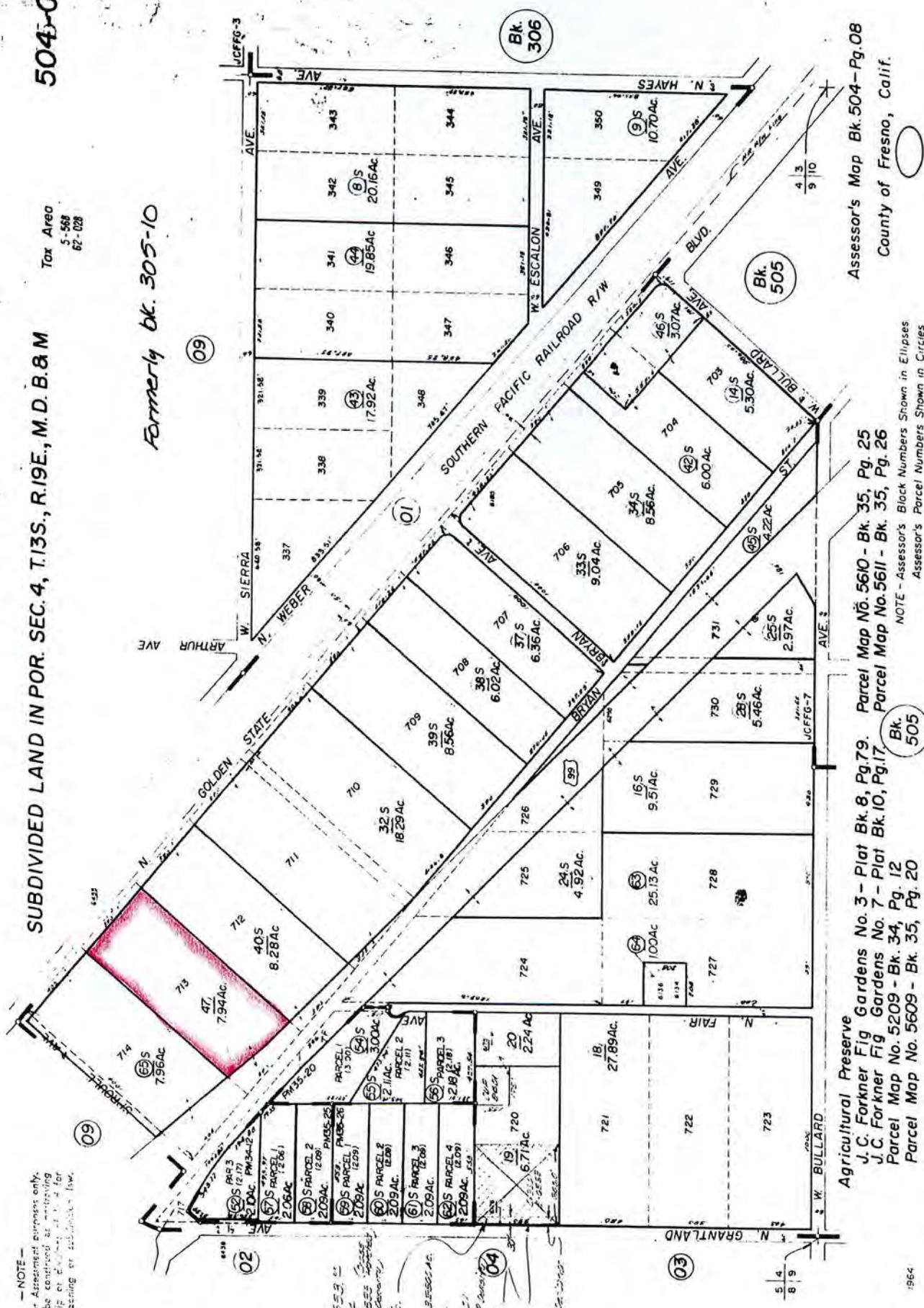
4

NOTE -
This map is for Assessment purposes only.
It is not to be construed as surveying or engineering.
For purposes of zoning or subdivision law.

SUBDIVIDED LAND IN POR. SEC. 4, T.13S., R.19E., M.D.B.&M

Tax Area
5568
62-028

504-08



NEW

DOCUMENT

Douglas B. sen #040877
John L.B. Smith #067592
William S. Barcus #142967
1 BAKER, MANOCK & JENSEN
2 A PROFESSIONAL CORPORATION
3 FIG GARDEN FINANCIAL CENTER
4 5280 NORTH PALM AVENUE, FOURTH FLOOR
FRESNO, CALIFORNIA 93704-2209
TELEPHONE
AREA CODE 209
432-6400

FILED
OCT 17 1996

FRESNO COUNTY SUPERIOR COURT
By _____ G.R. DEPUTY

5 Attorneys for Plaintiff FRESNO METROPOLITAN FLOOD

CONTROL DISTRICTS OF
FRESNO COUNTY, CALIFORNIA.
AT _____ MIN PAGE _____ M

OCT 22 1996

SUPERIOR COURT OF CALIFORNIA
9 COUNTY OF FRESNO

WILLIAM C. GREENWOOD
County Recorder

FEB
S/

10 FRESNO METROPOLITAN FLOOD) Case No. 533130-1
11 CONTROL DISTRICT, a California)
public corporation,)
12 Plaintiff,)
13 v.) STIPULATED FINAL ORDER OF
14 RANCHO RIVINGTON, a Limited) CONDEMNATION
15 Partnership, et al.,)
16 Defendants.)

17 Stipulated Judgment in Condemnation Nunc Pro Tunc having
18 been entered in the above-entitled action on August 20, 1996, in
19 the office of the County Clerk in the County of Fresno, State of
20 California, and it appearing to the Court's satisfaction that the
21 above-named Plaintiff, under that Judgment, has paid to Defendant
22 just compensation in the sum of \$515,000.00, plus interest
23 beginning on July 29, 1996, and costs-of-suit as allowed by law,
24 in accordance with the Stipulated Judgment in Condemnation on file
25 in this action:

26 IT IS ORDERED AND ADJUDGED:

27 1. That the fee simple title to the parcels of
28 property, including any and all improvements thereon, situated in

1 the County of Fresno, State of California, and more particularly
2 described in Exhibit "A" attached hereto, are hereby condemned to
3 Plaintiff FRESNO METROPOLITAN FLOOD CONTROL DISTRICT for public
4 use.

5 2. That on filing a certified copy of this Final Order
6 of Condemnation with the County Recorder of the County of
7 California, State of California, the fee simple title to the real
8 property described in foregoing paragraphs shall vest in Plaintiff
9 FRESNO METROPOLITAN FLOOD CONTROL DISTRICT.

10 DATED: 10/16, 1996.

11 STEPHEN J. KANE

12 JUDGE OF THE SUPERIOR COURT

13 APPROVED AS TO FORM:

14 BAKER, MANOCK & JENSEN

15 By John L.B. Smith
16 John L.B. Smith
17 Attorneys for Plaintiff

18 MOTSCHIEDLER, MICHAELIDES & WISHON

20 By C. William Brewer
21 C. William Brewer
22 Attorneys for Defendants

28 4496\4241\21675 JLS

July 1, 1993

FRESNO METROPOLITAN FLOOD CONTROL DISTRICT
BASIN EH ACQUISITION

ASSESSOR'S PARCEL NUMBER: 305-100-40S

RECORD OWNER: Rancho Rivington
1441 4th Street
Santa Monica, California 90401

AREA OF PROPOSED ACQUISITION: 6.154± Acres

LEGAL DESCRIPTION FOR PROPOSED BASIN EH:

That portion of Lot 712 of J.C. FORKNER FIG GARDENS SUBDIVISION NO. 7, in the City of Fresno, County of Fresno, State of California, according to the map thereof recorded in Book 10 at Page 17 of Plats, Fresno County Records, described as follows:

Beginning at the Southwesterly corner of the Northeasterly 30.00 feet of said Lot 712; thence South 40°-25'-44" West along the Northwesterly line of said Lot 712 a distance of 913.39 feet to the point of intersection thereof with the Northerly boundary of State Highway 99 as granted to the State of California by Deed recorded December 31, 1958, in Book 4156 at Page 84 of Official Records, as Series No. 84537; thence South 44°-38'-23" East (South 44°-45'-00" East, Deed) along the Northerly boundary of said State Highway 99 a distance of 290.62 feet to the point of intersection thereof with a line which is parallel with and 100.00 feet Northwesterly of, measured at right angles thereto, the Southeasterly line of said Lot 712; thence North 40°-27'-02" East along said parallel line a distance of 937.17 feet to the point of intersection thereof with the Southwesterly line of the Northeasterly 30.00 feet of said Lot 712; thence North 49°-20'-00" West along the Southwesterly line of the Northeasterly 30.00 feet of said Lot 712 a distance of 289.91 feet to the point of beginning.

EXHIBIT A



NEW

DOCUMENT

AUDIT 251776

(C)

Pipeline Crossing 080808
Form Approved, AVP-Law

Folder No. 2531-30

PIPELINE CROSSING AGREEMENT

Mile Post: 198.83, Fresno Subdivision
Location: Fresno, Fresno County, California

THIS AGREEMENT ("Agreement") is made and entered into as of May 29, 2009, ("Effective Date") by and between **UNION PACIFIC RAILROAD COMPANY**, a Delaware corporation, ("Licensor") and **FRESNO METROPOLITAN FLOOD CONTROL DISTRICT**, a California public corporation to be addressed at 5469 E Olive Avenue, Fresno, California 93727 ("Licensee").

IT IS MUTUALLY AGREED BY AND BETWEEN THE PARTIES HERETO AS FOLLOWS:

Article 1. LICENSOR GRANTS RIGHT.

In consideration of the license fee to be paid by the Licensee and in further consideration of the covenants and agreements herein contained to be by the Licensee kept, observed and performed, the Licensor hereby grants to the Licensee the right to construct and thereafter, during the term hereof, to maintain and operate

one 42" uncased pipeline for transporting and conveying storm water only

across Licensor's track(s) and property (the "Pipeline") in the location shown and in conformity with the dimensions and specifications indicated on the print dated April 16, 2009 and marked **Exhibit A**, attached hereto and hereby made a part hereof. Under no circumstances shall Licensee modify the use of the Pipeline for a purpose other than transporting and conveying storm water, and the Pipeline shall not be used to convey any other substance, any fiber optic cable, or for any other use, whether such use is currently technologically possible, or whether such use may come into existence during the life of this Agreement.

Article 2. LICENSE FEE.

Upon execution of this Agreement, the Licensee shall pay to the Licensor a one-time License Fee of **Nine Thousand Two Hundred Dollars (\$9,200.00)**.

Article 3. CONSTRUCTION, MAINTENANCE AND OPERATION.

The grant of right herein made to the Licensee is subject to each and all of the terms, provisions, conditions, limitations and covenants set forth herein and in **Exhibit B**, attached hereto and hereby made a part hereof.

Article 4. DEFINITION OF LICENSEE.

For purposes of this Agreement, all references in this Agreement to the Licensee shall include the Licensee's contractors, subcontractors, officers, agents and employees, and others acting under its or their authority. If a contractor is hired by the Licensee for any work performed on the Pipeline (including initial construction and subsequent relocation or maintenance and repair work), then the Licensee shall provide a copy of this Agreement to its contractor and require its contractor to comply with all the terms and provisions hereof relating to the work to be performed. Any contractor or subcontractor shall be deemed an agent of Licensee for the purpose of this Agreement, and Licensee shall require such contractor or subcontractor to release, defend and indemnify Lessor to the same extent and under the same terms and conditions as Licensee is required to release, defend and indemnify Lessor herein.

Article 5. INSURANCE.

A. Before commencement of the term of this Agreement and prior to any Pipeline construction, the Licensee or Licensee's contractor shall obtain the required Railroad Protective Liability insurance, at its sole expense, as specified in Section E on **Exhibit C** attached hereto and hereby made a part hereof. The Licensee, at its sole expense, shall also provide to the Lessor the other insurance binders, certificates and endorsements described in **Exhibit C**, and also require that its contractor or subcontractor maintain the insurance coverages as set forth in **Exhibit C**, naming Lessor as an additional insured.

B. Not more frequently than once every two years, Lessor may reasonably modify the required insurance coverage to reflect then-current risk management practices in the railroad industry and underwriting practices in the insurance industry.

C. All insurance correspondence, binders, certificates and endorsements shall be directed to:

Union Pacific Railroad Company
Real Estate Department – Folder No. 2531-30
1400 Douglas Street STOP 1690
Omaha, NE 68179-1690

D. Failure to provide evidence as required by this section shall entitle, but not require, Lessor to terminate this License immediately. Acceptance of a certificate that does not comply with this Article shall not operate as a waiver of Licensee's obligations hereunder.

E. If the Licensee is a public entity subject to any applicable statutory tort laws, the limits of insurance described in **Exhibit C** shall be the limits the Licensee then has in effect or which is required by applicable current or subsequent law, whichever is greater, a portion of which may be self-insured with the consent and approval of Lessor.

F. The fact that insurance (including without limitation, self-insurance) is obtained by Licensee or its contractor/subcontractor shall not be deemed to release or diminish the liability of Licensee including, without limitation, liability under the indemnity provisions of this License. Damages recoverable by Lessor shall not be limited by the amount of the required insurance coverage.

Article 6. TERM.

This Agreement shall take effect as of the Effective Date first herein written and shall continue in full force and effect until terminated as herein provided.

Article 7. TEMPORARY SPOIL PILE AREA

The Licensee is further granted a 10 foot wide by 100 foot length temporary spoil pile area for construction of the pipeline as shown on Exhibit A-1. This temporary work area will expire on October 1, 2009. The right of way must be returned to its original condition or better. Licensee must arrange a pre-construction meeting with Lessor's Manager of Track Maintenance prior to construction.

**JOSHUA ROBINSON, MTM
UNION PACIFIC RAILROAD
515-708-0439
515-943-0438**

**Article 8. SPECIAL PROVISION – RAILROAD FLAGMAN; WHEN REQUIRED;
FLAGGING CHARGES.**

A. No work of any kind shall be performed, and no person, equipment, machinery, tool(s), material(s), vehicle(s), or thing(s) shall be located, operated, placed, or stored within 25 feet of any of Railroad's track(s) at any time, for any reason, unless and until a Railroad flagman is provided to watch for trains, pursuant to the terms of the attached Exhibit 'B'. All expenses connected with the furnishing of said flagman shall be at the sole cost and expense of the Licensee, who shall promptly pay to Railroad all charges connected therewith, within 30 days after presentation of a bill therefore.

B. One and one-half times the current hourly rate is paid for overtime, Saturdays and Sundays; two and one-half times current hourly rate for holidays.

C. Wage rates are subject to change, at any time, by law or by agreement between the Railroad and its employees, and may be retroactive as a result of negotiations or a ruling of an authorized Governmental Agency. Additional charges on labor are also subject to change. If the wage rate or additional charges are changed, the Licensee shall pay on the basis of the new rates and charges.

D. Reimbursement to the Railroad will be required covering the full eight hour day during which any flagman is furnished, unless he can be assigned to other Railroad work during a portion of such day, in which event reimbursement will not be required for the portion of the day during which the flagman is engaged in other work. Reimbursement will also be required for any day not actually worked by said flagman following his assignment to work on the project for which the Railroad is required to pay the flagman and which could not reasonably be avoided by the Railroad Company by assignment of such flagman to other work, even though the Licensee may not be working during such time.

E. Arrangements for flagging are to be made at least Ten (10) days in advance of commencing work, with the Railroad Manager of Track Maintenance.

Article 9. RAILROAD INSPECTOR.

A Railroad inspector is required to monitor the ground and track for movement during the jacking process. The installation process and all train movement must be immediately stopped if any movement is detected. The damaged area must be immediately repaired. The installation process must be reviewed and modified as required before the installation may proceed. Licensee must pay inspector's expense and the cost of any required repairs.

Article 10. AMENDMENT OF EXHIBIT B.

Sections 1(A), 2 (B) and (C); 5(A) and (B); 7(B); 11, and 13(A) and (B) of attached Exhibit B, hereto attached, are amended to read as follows:

Section 1. LIMITATION AND SUBORDINATION OF RIGHTS GRANTED

A. The Rights of the Lessor and Licensee shall be governed by the within Agreement. To the extent their rights are not defined herein (e.g., priorities of use in the servient tenement), and the parties do not otherwise agree, they shall be determined by the Court, if the Licensee condemns an easement in the property subject to this License Agreement. If the Licensee does not condemn an easement in the property subject hereto, rights not defined herein shall be as determined in Fresno County Superior Court condemnation No. 02 CE CG 02913, Fresno Metropolitan Flood Control v Union Pacific Railroad Company, which pertains to underground pipeline easement in other lands owned by Lessor.

Section 2. CONSTRUCTION, MAINTENANCE AND OPERATION

B. All work performed on property of the Lessor in connection with the design, construction, maintenance, repair, renewal, modification or reconstruction of the Pipeline shall be done to the reasonable satisfaction of the Lessor.

C. Prior to the commencement of any work in connection with the design, construction, maintenance, repair, renewal, modification, relocation, reconstruction or removal of the Pipeline where it passes underneath the roadbed and track or tracks of the Lessor, the Licensee shall submit to the Lessor plans setting out the method and manner of handling the work, including the shoring and cribbing, if any, required to protect the Lessor's operations, and shall not proceed with the work until such plans have been approved by the Lessor's Assistant Vice President Engineering Design, or his authorized representative, and then the work shall be done to the satisfaction of the Lessor's Assistant Vice President Engineering Design or his authorized representative. The Lessor shall have the right, if it so elects, to provide such support as it may deem necessary for the safety of its track or tracks during the time of construction, maintenance, repair, renewal, modification, relocation, reconstruction or removal of the Pipeline, and, in the event the Lessor provides such support, the Licensee shall pay to the Lessor, within fifteen (15) days after bills shall have been rendered therefore, all expenses incurred by the Lessor in connection therewith, which expenses shall include all assignable costs.

Section 5. REINFORCEMENT, RELOCATION OR REMOVAL OF PIPELINE

The license herein granted is subject to the needs and requirements of the Licensor in the operation of its railroad and in the improvement and use of its property, and the Licensee shall, at the sole expense of the Licensee, reinforce all or any portion of the Pipeline upon reasonable prior notice whenever, in the furtherance of its needs and requirements, the Licensor shall find such action necessary or desirable.

Section 7. PROTECTION OF FIBER OPTIC CABLE SYSTEMS

B. IN ADDITION TO OTHER INDEMNITY PROVISIONS IN THIS AGREEMENT, THE LICENSEE SHALL, AND SHALL CAUSE ITS CONTRACTOR TO, RELEASE, INDEMNIFY, DEFEND AND HOLD THE LICENSOR HARMLESS FROM AND AGAINST ALL COSTS, LIABILITY AND EXPENSE WHATSOEVER (INCLUDING, WITHOUT LIMITATION, ATTORNEYS' FEES, COURT COSTS AND EXPENSES) CAUSED BY THE NEGLIGENCE OF THE LICENSEE, ITS CONTRACTOR, AGENTS AND/OR EMPLOYEES, RESULTING IN (1) ANY DAMAGE TO OR DESTRUCTION OF ANY TELECOMMUNICATIONS SYSTEM ON LICENSOR'S PROPERTY, AND/OR (2) ANY INJURY TO OR DEATH OF ANY PERSON EMPLOYED BY OR ON BEHALF OF ANY TELECOMMUNICATIONS COMPANY, AND/OR ITS CONTRACTOR, AGENTS AND/OR EMPLOYEES, ON LICENSOR'S PROPERTY, EXCEPT IF SUCH COSTS, TO THE EXTENT LIABILITY OR EXPENSES ARE CAUSED SOLELY BY THE DIRECT ACTIVE NEGLIGENCE OF THE LICENSOR. LICENSEE FURTHER AGREES THAT IT SHALL NOT HAVE OR SEEK RECOURSE AGAINST LICENSOR FOR ANY CLAIM OR CAUSE OF ACTION FOR ALLEGED LOSS OF PROFITS OR REVENUE OR LOSS OF SERVICE OR OTHER CONSEQUENTIAL DAMAGE TO A TELECOMMUNICATION COMPANY USING LICENSOR'S PROPERTY OR A CUSTOMER OR USER OF SERVICES OF THE FIBER OPTIC CABLE ON LICENSOR'S PROPERTY.

Section 11. REMOVAL OF PIPELINE UPON TERMINATION OF AGREEMENT

Prior to the termination of this Agreement however, the Licensee shall, at Licensee's sole expense, fill the Pipeline with sand/cement or slurry to the reasonable satisfaction of the Licensor. If the Licensee fails to do the foregoing, the Licensor may do such work at the cost and expense of the Licensee. In the event of such work by the Licensor, the Licensor shall in no manner be liable to the Licensee for any damage sustained by the Licensee for or on account thereof, and such work shall in no manner prejudice or impair any right of action for damages, or otherwise, that the Licensor may have against the Licensee.

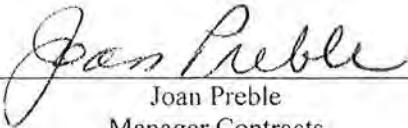
Section 13. TERMINATION

- A. If the Licensee abandons the use of the right herein granted or the Pipeline for one (1) year, or if the Licensee continues in default in the performance of any covenant or agreement herein contained for a period of thirty (30) days after written notice from the Licensor to the Licensee specifying such default, the Licensor may, at its option, forthwith immediately terminate this Agreement by written notice.
- B. Section 13(B) of Exhibit B is deleted.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date first herein written.

UNION PACIFIC RAILROAD COMPANY

By:


Joan Preble
Manager Contracts

FRESNO METROPOLITAN FLOOD
CONTROL DISTRICT

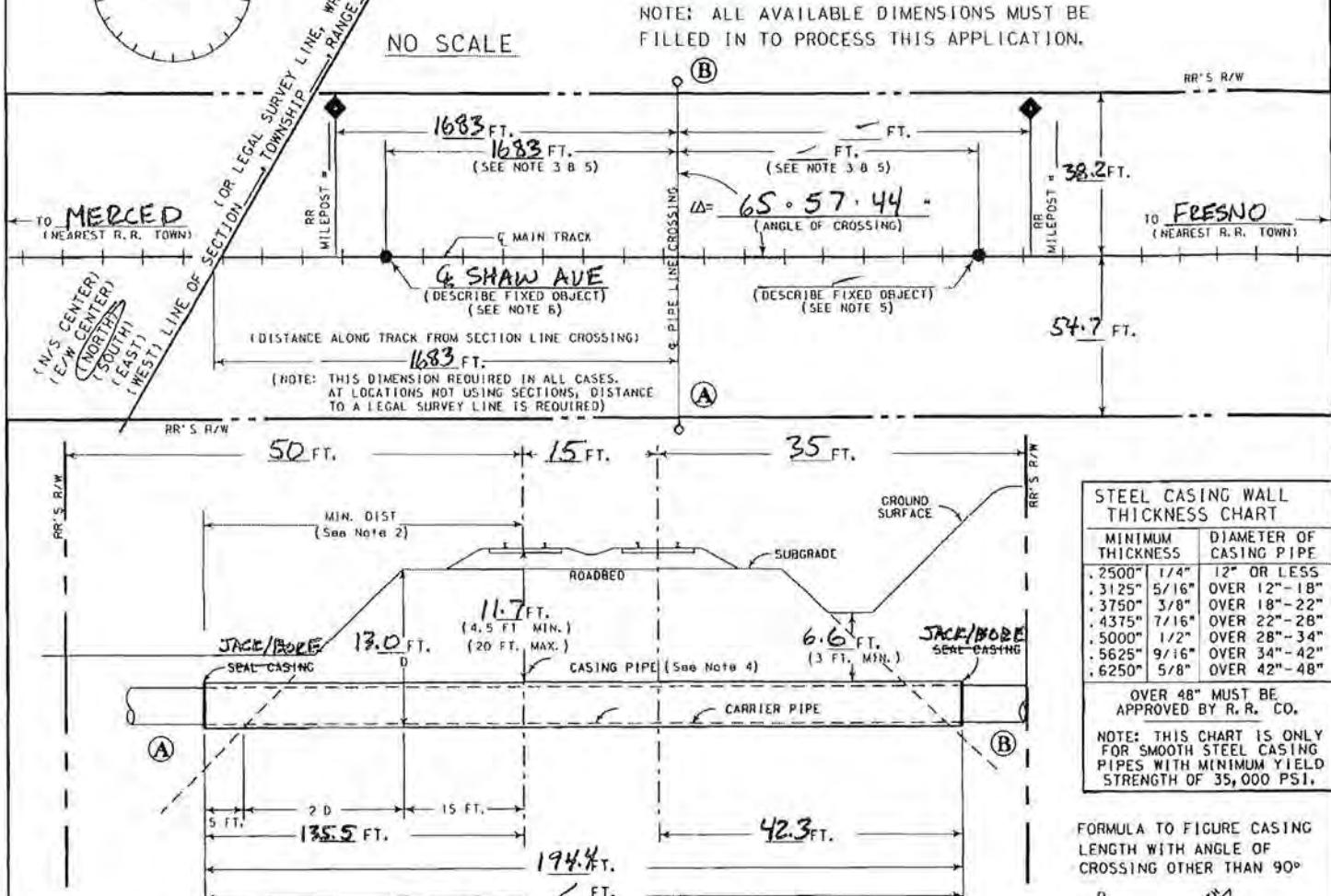
By:


Name Printed: Jerry Lakeeman
Title: District Engineer

PLACE ARROW INDICATING NORTH DIRECTION RELATIVE TO CROSSING

FORM DR-0404-B
REV. 5-15-98
WWW.UPTT.COM

UNENCASED NON-FLAMMABLE PIPELINE CROSSING



NOTES : (CASING LENGTH WHEN MEASURED ALONG PIPELINE.)

- 1) ALL HORIZONTAL DISTANCES TO BE MEASURED AT RIGHT ANGLES FROM THE C. OF TRACK.
- 2) CASING TO EXTEND BEYOND THE C. OF TRACK AT RIGHT ANGLES THE GREATER OF 2D + 20 FT., OR 30 FT., AND BEYOND LIMIT OF RAILROAD RIGHT-OF-WAY IF NECESSARY TO PROVIDE PROPER LENGTH OUTSIDE OF TRACK.
- 3) MINIMUM OF 50' FROM THE END OF ANY RAILROAD BRIDGE, C. OF ANY CULVERT, OR FROM ANY SWITCHING AREA.
- 4) SIGNAL REPRESENTATIVE MUST BE PRESENT DURING INSTALLATION IF RAILROAD SIGNALS ARE IN THE VICINITY OF CROSSING.
- 5) ALLOWABLE FIXED OBJECTS INCLUDE: BACKWALLS OF BRIDGES; C. OF ROAD CROSSINGS & OVERHEAD VIADUCTS (GIVE ROAD NAME); OR CULVERTS.
- 6) CASING AND CARRIER PIPE MUST BE PLACED A MINIMUM OF 2 FEET BELOW THE EXISTING FIBER OPTIC CABLE. ANY EXCAVATION REQUIRED WITHIN 5 FEET OF THE EXISTING FIBER OPTIC CABLE MUST BE HAND DUG.

- A) IS PIPELINE CROSSING WITHIN DEDICATED STREET? YES; NO;
- B) IF YES, NAME OF STREET N/A
- D) DISTRIBUTION LINE N/A OR TRANSMISSION LINE _____
- C) CARRIER PIPE :
COMMODITY TO BE CONVEYED STORM WATER
OPERATING PRESSURE 0 PSI
WALL THICKNESS 4 1/2"; DIAMETER 42"; MATERIAL RGP/CP;
- E) CASING PIPE :
WALL THICKNESS N/A; DIAMETER N/A; MATERIAL N/A;
NOTE : CASING MUST HAVE 2" CLEARANCE BETWEEN GREATEST OUTSIDE DIAMETER OF CARRIER PIPE AND INTERIOR DIAMETER OF CASING PIPE. WHEN FURNISHING DIMENSIONS, GIVE OUTSIDE OF CARRIER PIPE AND INSIDE OF CASING PIPE.
- F) METHOD OF INSTALLING CASING PIPE UNDER TRACK(S):
DRY BORE AND JACK (WET BORE NOT PERMITTED);
TUNNEL ; OTHER DIRECT JACK AND BORE
- G) WILL CONSTRUCTION BE BY AN OUTSIDE CONTRACTOR? YES; NO;
- H) DISTANCE FROM CENTER LINE OF TRACK TO NEAR FACE OF BORING AND JACKING PITS WHEN MEASURED AT RIGHT ANGLES TO TRACK 121' 8 3/4" (30' MIN.)
- I) APPLICANT HAS CONTACTED 1-800-336-9193, U. P. COMMUNICATION DEPARTMENT, AND HAS DETERMINED FIBER OPTIC CABLE DOES ; DOES NOT ; EXIST IN VICINITY OF WORK TO BE PERFORMED . TICKET NO. _____

EXHIBIT "A"

(FOR RAILROAD USE ONLY)

UNION PACIFIC RAILROAD CO.

Fresno

(SUBDIVISION)
M. P. 198.83 E. S. 5578+43±

UNENCASED Pipeline CROSSING AT
Fresno Fresno CA
(NEAREST CITY) (COUNTY) (STATE)

Fresno Metropolitan Flood Control District
(APPLICANT)
RR FILE NO. 2531-30 DATE 4-16-09

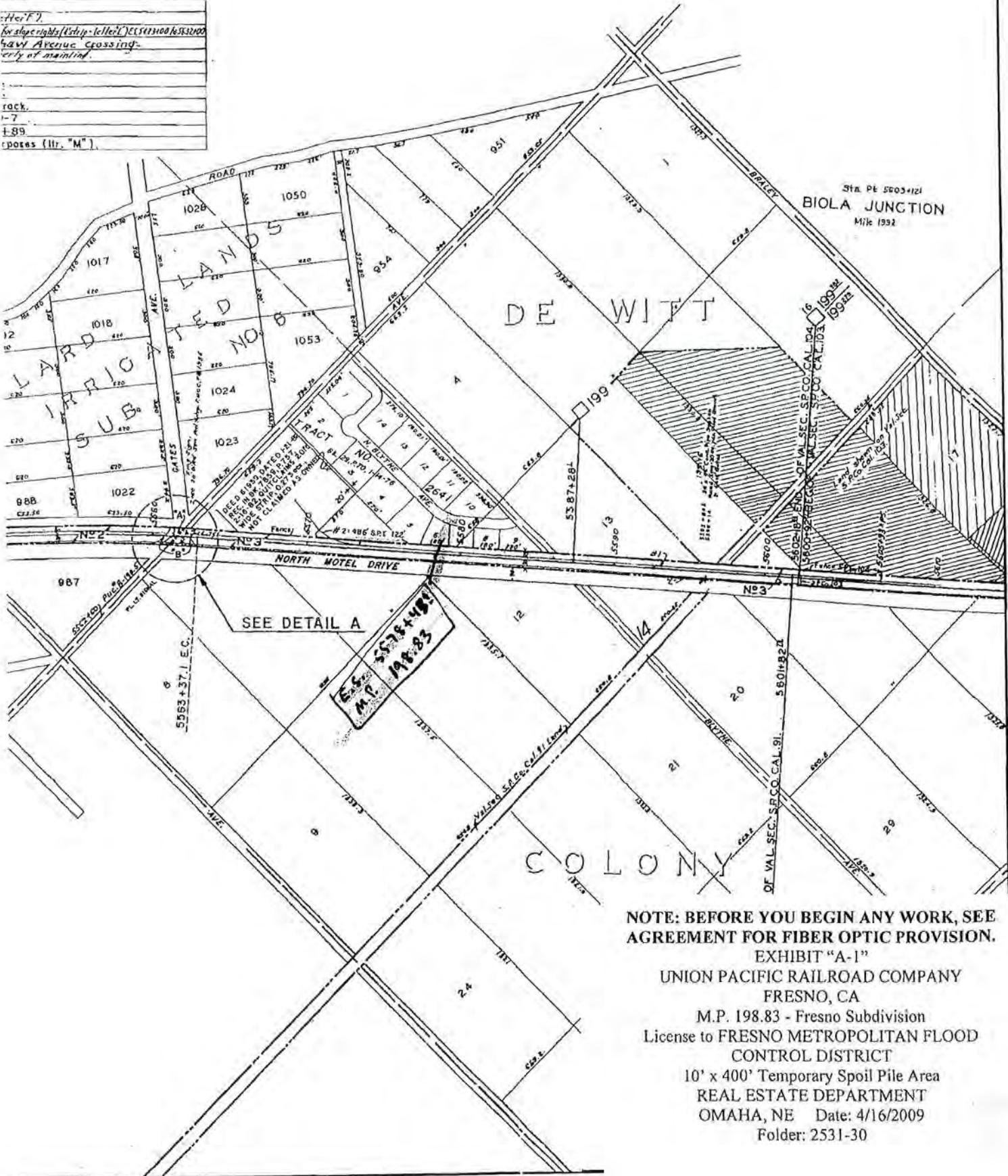
WARNING

IN ALL OCCASIONS, U. P. COMMUNICATIONS DEPARTMENT MUST BE CONTACTED IN ADVANCE OF ANY WORK TO DETERMINE EXISTENCE AND LOCATION OF FIBER OPTIC CABLE.
PHONE : 1-800-336-9193

Note No. 1
Note No. 2
Note No. 3
62.373 acres, 400' of which 7.930 acres, are shown as Part 9 on Map 26.
Central Pacific Railroad Co. was purchased by Central Pacific Ry. Co. by S.S. Peed, adit. No. 18237, dated July 29, 1899, recorded at Aug. 5, 1900, C.P.Ry. and from Es. #6023922 to Es. #64401 has been consolidated with C.P. Ry. Cat. 3 effective Jan. 1930. Lands and facilities have been re-

After F9,
for stage rights/strip-letter 'L') £55133100 to £5532100
Gavy Avenue Crossing-
erly of mainland.

rock,
1-7
189
poses (lit. "M")



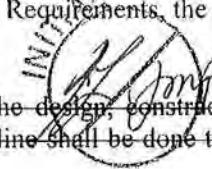
INITIAL


EXHIBIT B SEE ARTICLE 10

Section 1. LIMITATION AND SUBORDINATION OF RIGHTS GRANTED.

- A. The foregoing grant of right is subject and subordinate to the prior and continuing right and obligation of the Licenser to use and maintain its entire property including the right and power of the Licenser to construct, maintain, repair, renew, use, operate, change, modify or relocate railroad tracks, signal, communication, fiber optics, or other wire lines, pipelines and other facilities upon, along or across any or all parts of its property, all or any of which may be freely done at any time or times by the Licenser without liability to the Licensee or to any other party for compensation or damages.
- B. The foregoing grant is also subject to all outstanding superior rights (including those in favor of licensees and lessees of the Licenser's property, and others) and the right of the Licenser to renew and extend the same, and is made without covenant of title or for quiet enjoyment.

Section 2. CONSTRUCTION, MAINTENANCE AND OPERATION.

- A. The Pipeline shall be designed, constructed, operated, maintained, repaired, renewed, modified and/or reconstructed by the Licensee in strict conformity with (I) Licenser's current standards and specifications ("UP Specifications"), except for variances approved in advance in writing by the Licenser's Assistant Vice President Engineering - Design, or his authorized representative; (ii) such other additional safety standards as the Licenser, in its sole discretion, elects to require, including, without limitation, American Railway Engineering and Maintenance-of-Way Association ("AROMA") standards and guidelines (collectively, "UP Additional Requirements"), and (iii) all applicable laws, rules and regulations ("Laws"). If there is any conflict between the requirements of any Law and the UP Specifications or the UP Additional Requirements, the most restrictive will apply.
SEE ARTICLE 10

- B. All work performed on property of the Licenser in connection with the design, construction, maintenance, repair, renewal, modification or reconstruction of the Pipeline shall be done to the satisfaction of the Licenser.
- C. Prior to the commencement of any work in connection with the design, construction, maintenance, repair, renewal, modification, relocation, reconstruction or removal of the Pipeline where it passes underneath the roadbed and track or tracks of the Licenser, the Licensee shall submit to the Licenser plans setting out the method and manner of handling the work, including the shoring and cribbing, if any, required to protect the Licenser's operations, and shall not proceed with the work until such plans have been approved by the Licenser's Assistant Vice President Engineering Design, or his authorized representative, and then the work shall be done to the satisfaction of the Licenser's Assistant Vice President Engineering Design or his authorized representative. The Licenser shall have the right, if it so elects, to provide such support as it may deem necessary for the safety of its track or tracks during the time of construction, maintenance, repair, renewal, modification, relocation, reconstruction or removal of the Pipeline, and, in the event the Licenser provides such support, the Licensee shall pay to the Licenser, within fifteen (15) days after bills shall have been rendered therefore, all expenses incurred by the Licenser in connection therewith, which expenses shall include all assignable costs.

- D. The Licensee shall keep and maintain the soil over the Pipeline thoroughly compacted and the grade even with the adjacent surface of the ground.
- E. In the prosecution of any work covered by this Agreement, Licensee shall secure any and all necessary permits and shall comply with all applicable federal, state and local laws, regulations and enactments affecting the work including, without limitation, all applicable Federal Railroad Administration regulations.

Section 3. NOTICE OF COMMENCEMENT OF WORK / LICENSOR REPRESENTATIVE / SUPERVISION / FLAGGING / SAFETY.

- A. If an emergency should arise requiring immediate attention, the Licensee shall provide as much notice as practicable to Licensor before commencing any work. In all other situations, the Licensee shall notify the Licensor at least ten (10) days (or such other time as the Licensor may allow) in advance of the commencement of any work upon property of the Licensor in connection with the construction, maintenance, repair, renewal, modification, reconstruction, relocation or removal of the Pipeline. All such work shall be prosecuted diligently to completion. The Licensee will coordinate its initial, and any subsequent work with the following employee of Licensor or his or her duly authorized representative (hereinafter "Licensor Representative" or "Railroad Representative"):

JOSHUA ROBINSON, MTM
UNION PACIFIC RAILROAD
515-708-0439
515-943-0438

- B. Licensee, at its own expense, shall adequately police and supervise all work to be performed. The responsibility of Licensee for safe conduct and adequate policing and supervision of work shall not be lessened or otherwise affected by Licensor's approval of plans and specifications involving the work, or by Licensor's collaboration in performance of any work, or by the presence at the work site of a Licensor Representative, or by compliance by Licensee with any requests or recommendations made by the Licensor Representative.
- C. At the request of Licensor, Licensee shall remove from Licensor's property any employee who fails to conform to the instructions of the Licensor Representative in connection with the work on Licensor's property. Licensee shall indemnify Licensor against any claims arising from the removal of any such employee from Licensor's property.
- D. Licensee shall notify the Licensor Representative at least ten (10) working days in advance of proposed performance of any work in which any person or equipment will be within twenty-five (25) feet of any track, or will be near enough to any track that any equipment extension (such as, but not limited to, a crane boom) will reach to within twenty-five (25) feet of any track. No work of any kind shall be performed, and no person, equipment, machinery, tool(s), material(s), vehicle(s), or thing(s) shall be located, operated, placed, or stored within twenty-five (25) feet of any of Licensor's track(s) at any time, for any reason, unless and until a railroad flagman is provided to watch for trains. Upon receipt of such ten (10) day notice, the Licensor Representative will determine and inform Licensor whether a flagman need be present and whether any special protective or safety measures need to be implemented. If flagging or other special protective or safety measures are performed by Licensor, Licensor will bill Licensee for

such expenses incurred by Licensor, unless Licensor and a federal, state or local governmental entity have agreed that Licensor is to bill such expenses to the federal, state or local governmental entity. If Licensor will be sending the bills to Licensee, Licensee shall pay such bills within thirty (30) days of receipt of billing. If Licensor performs any flagging, or other special protective or safety measures are performed by Licensor, Licensee agrees that Licensee is not relieved of any of responsibilities or liabilities set forth in this Agreement.

- E. The rate of pay per hour for each flagman will be the prevailing hourly rate in effect for an eight-hour day for the class of flagmen used during regularly assigned hours and overtime in accordance with Labor Agreements and Schedules in effect at the time the work is performed. In addition to the cost of such labor, a composite charge for vacation, holiday, health and welfare, supplemental sickness, Railroad Retirement and unemployment compensation, supplemental pension, Employees Liability and Property Damage and Administration will be included, computed on actual payroll. The composite charge will be the prevailing composite charge in effect at the time the work is performed. One and one-half times the current hourly rate is paid for overtime, Saturdays and Sundays, and two and one-half times current hourly rate for holidays. Wage rates are subject to change, at any time, by law or by agreement between Licensor and its employees, and may be retroactive as a result of negotiations or a ruling of an authorized governmental agency. Additional charges on labor are also subject to change. If the wage rate or additional charges are changed, Licensee (or the governmental entity, as applicable) shall pay on the basis of the new rates and charges.
- F. Reimbursement to Licensor will be required covering the full eight-hour day during which any flagman is furnished, unless the flagman can be assigned to other railroad work during a portion of such day, in which event reimbursement will not be required for the portion of the day during which the flagman is engaged in other railroad work. Reimbursement will also be required for any day not actually worked by the flagman following the flagman's assignment to work on the project for which Licensor is required to pay the flagman and which could not reasonably be avoided by Licensor by assignment of such flagman to other work, even though Licensee may not be working during such time. When it becomes necessary for Licensor to bulletin and assign an employee to a flagging position in compliance with union collective bargaining agreements, Licensee must provide Licensor a minimum of five (5) days notice prior to the cessation of the need for a flagman. If five (5) days notice of cessation is not given, Licensee will still be required to pay flagging charges for the five (5) day notice period required by union agreement to be given to the employee, even though flagging is not required for that period. An additional ten (10) days notice must then be given to Licensor if flagging services are needed again after such five day cessation notice has been given to Licensor.
- G. Safety of personnel, property, rail operations and the public is of paramount importance in the prosecution of the work performed by Licensee or its contractor. Licensee shall be responsible for initiating, maintaining and supervising all safety, operations and programs in connection with the work. Licensee and its contractor shall at a minimum comply with Licensor's safety standards listed in **Exhibit D**, hereto attached, to ensure uniformity with the safety standards followed by Licensor's own forces. As a part of Licensee's safety responsibilities, Licensee shall notify Licensor if it determines that any of Licensor's safety standards are contrary to good safety practices. Licensee and its contractor shall furnish copies of **Exhibit D** to each of its employees before they enter the job site.
- H. Without limitation of the provisions of paragraph G above, Licensee shall keep the job site free from safety and health hazards and ensure that their employees are competent and adequately trained in all safety and health aspects of the job.

- I. Licensee shall have proper first aid supplies available on the job site so that prompt first aid services may be provided to any person injured on the job site. Prompt notification shall be given to Lessor of any U.S. Occupational Safety and Health Administration reportable injuries. Licensee shall have a non-delegable duty to control its employees while they are on the job site or any other property of Lessor, and to be certain they do not use, be under the influence of, or have in their possession any alcoholic beverage, drug or other substance that may inhibit the safe performance of any work.
- J. If and when requested by Lessor, Licensee shall deliver to Lessor a copy of its safety plan for conducting the work (the "Safety Plan"). Lessor shall have the right, but not the obligation, to require Licensee to correct any deficiencies in the Safety Plan. The terms of this Agreement shall control if there are any inconsistencies between this Agreement and the Safety Plan.

Section 4. LICENSEE TO BEAR ENTIRE EXPENSE.

The Licensee shall bear the entire cost and expense incurred in connection with the design, construction, maintenance, repair and renewal and any and all modification, revision, relocation, removal or reconstruction of the Pipeline, including any and all expense which may be incurred by the Lessor in connection therewith for supervision, inspection, flagging, or otherwise.

Section 5. REINFORCEMENT, RELOCATION OR REMOVAL OF PIPELINE.

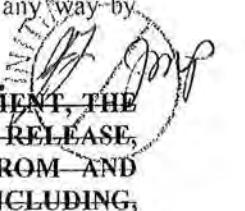
- SEE ARTICLE 10*
- INITIALS: JMF*
- A. The license herein granted is subject to the needs and requirements of the Lessor in the safe and efficient operation of its railroad and in the improvement and use of its property. The Licensee shall, at the sole expense of the Licensee, reinforce or otherwise modify the Pipeline, or move all or any portion of the Pipeline to such new location, or remove the Pipeline from the Lessor's property, as the Lessor may designate, whenever, in the furtherance of its needs and requirements, the Lessor, at its sole election, finds such action necessary or desirable.
 - B. All the terms, conditions and stipulations herein expressed with reference to the Pipeline on property of the Lessor in the location hereinbefore described shall, so far as the Pipeline remains on the property, apply to the Pipeline as modified, changed or relocated within the contemplation of this section.

Section 6. NO INTERFERENCE WITH LESSOR'S OPERATION.

- A. The Pipeline and all parts thereof within and outside of the limits of the property of the Lessor shall be designed, constructed and, at all times, maintained, repaired, renewed and operated in such manner as to cause no interference whatsoever with the constant, continuous and uninterrupted use of the tracks, property and facilities of the Lessor and nothing shall be done or suffered to be done by the Licensee at any time that would in any manner impair the safety thereof.
- B. Explosives or other highly flammable substances shall not be stored on Lessor's property without the prior written approval of Lessor.
- C. No additional vehicular crossings (including temporary haul roads) or pedestrian crossings over Lessor's trackage shall be installed or used by Lessor or its contractors without the prior written permission of Lessor.

- D. When not in use, any machinery and materials of Licensor or its contractors shall be kept at least fifty (50) feet from the centerline of Licensor's nearest track.
- E. Operations of Licensor and work performed by Licensor's personnel may cause delays in the work to be performed by Licensee. Licensee accepts this risk and agrees that Licensor shall have no liability to Licensee or any other person or entity for any such delays. Licensee shall coordinate its activities with those of Licensor and third parties so as to avoid interference with railroad operations. The safe operation of Licensor's train movements and other activities by Licensor take precedence over any work to be performed by Licensee.

Section 7. PROTECTION OF FIBER OPTIC CABLE SYSTEMS.

- A. Fiber optic cable systems may be buried on the Licensor's property. Protection of the fiber optic cable systems is of extreme importance since any break could disrupt service to users resulting in business interruption and loss of revenue and profits. Licensee shall telephone the Licensor during normal business hours (7:00 a.m. to 9:00 p.m. Central Time, Monday through Friday, except for holidays) at 1-800-336-9193 (also a 24-hour, 7-day number for emergency calls) to determine if fiber optic cable is buried anywhere on the Licensor's premises to be used by the Licensee. If it is, Licensee will telephone the telecommunications company(is) involved, arrange for a cable locator, make arrangements for relocation or other protection of the fiber optic cable, all at Licensee's expense, and will commence no work on the Licensor's property until all such protection or relocation has been accomplished. Licensee shall indemnify and hold the Licensor harmless from and against all costs, liability and expense whatsoever (including, without limitation, attorneys' fees, court costs and expenses) arising out of or caused in any way by Licensee's failure to comply with the provisions of this paragraph.
SEE ARTICLE 10

- B. ~~IN ADDITION TO OTHER INDEMNITY PROVISIONS IN THIS AGREEMENT, THE LICENSEE SHALL, AND SHALL CAUSE ITS CONTRACTOR TO, RELEASE, INDEMNIFY, DEFEND AND HOLD THE LICENSOR HARMLESS FROM AND AGAINST ALL COSTS, LIABILITY AND EXPENSE WHATSOEVER (INCLUDING, WITHOUT LIMITATION, ATTORNEYS' FEES, COURT COSTS AND EXPENSES) CAUSED BY THE NEGLIGENCE OF THE LICENSEE, ITS CONTRACTOR, AGENTS AND/OR EMPLOYEES, RESULTING IN (1) ANY DAMAGE TO OR DESTRUCTION OF ANY TELECOMMUNICATIONS SYSTEM ON LICENSOR'S PROPERTY, AND/OR (2) ANY INJURY TO OR DEATH OF ANY PERSON EMPLOYED BY OR ON BEHALF OF ANY TELECOMMUNICATIONS COMPANY, AND/OR ITS CONTRACTOR, AGENTS AND/OR EMPLOYEES, ON LICENSOR'S PROPERTY, EXCEPT IF SUCH COSTS, LIABILITY OR EXPENSES ARE CAUSED SOLELY BY THE DIRECT ACTIVE NEGLIGENCE OF THE LICENSOR. LICENSEE FURTHER AGREES THAT IT SHALL NOT HAVE OR SEEK RE COURSE AGAINST LICENSOR FOR ANY CLAIM OR CAUSE OF ACTION FOR ALLEGED LOSS OF PROFITS OR REVENUE OR LOSS OF SERVICE OR OTHER CONSEQUENTIAL DAMAGE TO A TELECOMMUNICATION COMPANY USING LICENSOR'S PROPERTY OR A CUSTOMER OR USER OF SERVICES OF THE FIBER OPTIC CABLE ON LICENSOR'S PROPERTY.~~

Section 8. CLAIMS AND LIENS FOR LABOR AND MATERIAL; TAXES.

- A. The Licensee shall fully pay for all materials joined or affixed to and labor performed upon property of the Licensor in connection with the construction, maintenance, repair, renewal, modification or reconstruction of the Pipeline, and shall not permit or suffer any mechanic's or

material man's lien of any kind or nature to be enforced against the property for any work done or materials furnished thereon at the instance or request or on behalf of the Licensee. The Licensee shall indemnify and hold harmless the Lessor against and from any and all liens, claims, demands, costs and expenses of whatsoever nature in any way connected with or growing out of such work done, labor performed, or materials furnished.

- B. The Licensee shall promptly pay or discharge all taxes, charges and assessments levied upon, in respect to, or on account of the Pipeline, to prevent the same from becoming a charge or lien upon property of the Lessor, and so that the taxes, charges and assessments levied upon or in respect to such property shall not be increased because of the location, construction or maintenance of the Pipeline or any improvement, appliance or fixture connected therewith placed upon such property, or on account of the Licensee's interest therein. Where such tax, charge or assessment may not be separately made or assessed to the Licensee but shall be included in the assessment of the property of the Lessor, then the Licensee shall pay to the Lessor an equitable proportion of such taxes determined by the value of the Licensee's property upon property of the Lessor as compared with the entire value of such property.

Section 9. RESTORATION OF LICENSOR'S PROPERTY.

In the event the Lessor authorizes the Licensee in any manner moves or disturbs any of the property of the Lessor in connection with the construction, maintenance, repair, renewal, modification, reconstruction, relocation or removal of the Pipeline, then in that event the Licensee shall, as soon as possible and at Licensee's sole expense, restore such property to the same condition as the same were before such property was moved or disturbed, and the Licensee shall indemnify and hold harmless the Lessor, its officers, agents and employees, against and from any and all liability, loss, damages, claims, demands, costs and expenses of whatsoever nature, including court costs and attorneys' fees, which may result from injury to or death of persons whomsoever, or damage to or loss or destruction of property whatsoever, when such injury, death, damage, loss or destruction grows out of or arises from the moving or disturbance of any other property of the Lessor.

Section 10. INDEMNITY.

- A. As used in this Section, "Lessor" includes other railroad companies using the Lessor's property at or near the location of the Licensee's installation and their officers, agents, and employees; "Loss" includes loss, damage, claims, demands, actions, causes of action, penalties, costs, and expenses of whatsoever nature, including court costs and attorneys' fees, which may result from: (a) injury to or death of persons whomsoever (including the Lessor's officers, agents, and employees, the Licensee's officers, agents, and employees, as well as any other person); and/or (b) damage to or loss or destruction of property whatsoever (including Licensee's property, damage to the roadbed, tracks, equipment, or other property of the Lessor, or property in its care or custody).
- B. **AS A MAJOR INDUCEMENT AND IN CONSIDERATION OF THE LICENSE AND PERMISSION HEREIN GRANTED, TO THE FULLEST EXTENT PERMITTED BY LAW, THE LICENSEE SHALL, AND SHALL CAUSE ITS CONTRACTOR TO, RELEASE, INDEMNIFY, DEFEND AND HOLD HARMLESS THE LESSOR FROM ANY LOSS WHICH IS DUE TO OR ARISES FROM:**
- 1. THE PROSECUTION OF ANY WORK CONTEMPLATED BY THIS AGREEMENT INCLUDING THE INSTALLATION, CONSTRUCTION, MAINTENANCE, REPAIR,**

RENEWAL, MODIFICATION, RECONSTRUCTION, RELOCATION, OR REMOVAL OF THE PIPELINE OR ANY PART THEREOF;

2. ANY RIGHTS OR INTERESTS GRANTED PURSUANT TO THIS LICENSE;
3. THE PRESENCE, OPERATION, OR USE OF THE PIPELINE OR CONTENTS ESCAPING THERE FROM;
4. THE ENVIRONMENTAL STATUS OF THE PROPERTY CAUSED BY OR CONTRIBUTED TO BY LICENSEE;
5. ANY ACT OR OMISSION OF LICENSEE OR LICENSEE'S OFFICERS, AGENTS, INVITEES, EMPLOYEES, OR CONTRACTORS OR ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY ANY OF THEM, OR ANYONE THEY CONTROL OR EXERCISE CONTROL OVER; OR
6. LICENSEE'S BREACH OF THIS AGREEMENT,

EXCEPT WHERE THE LOSS IS CAUSED BY THE SOLE DIRECT NEGLIGENCE OF THE LICENSOR, AS DETERMINED IN A FINAL JUDGMENT BY A COURT OF COMPETENT JURISDICTION, IT BEING THE INTENTION OF THE PARTIES THAT THE ABOVE INDEMNITY WILL OTHERWISE APPLY TO LOSSES CAUSED BY OR ARISING FROM, IN WHOLE OR IN PART, LICENSOR'S NEGLIGENCE.

- C. Upon written notice from Licensor, Licensee agrees to assume the defense of any lawsuit of proceeding brought against any indemnities by any entity, relating to any matter covered by this License for which Licensee has an obligation to assume liability for and/or save and hold harmless any indemnities. Licensee shall pay all costs incident to such defense, including, but not limited to, reasonable attorney's fees, investigators' fees, litigation and appeal expenses, settlement payments and amounts paid in satisfaction of judgments.

SEE ARTICLE *10*

Section 11. REMOVAL OF PIPELINE UPON TERMINATION OF AGREEMENT.

Prior to the termination of this Agreement howsoever, the Licensee shall, at Licensee's sole expense, remove the Pipeline from those portions of the property not occupied by the roadbed and track or tracks of the Licensor and shall restore, to the satisfaction of the Licensor, such portions of such property to as good a condition as they were in at the time of the construction of the Pipeline. If the Licensee fails to do the foregoing, the Licensor may, but is not obligated, to perform such work of removal and restoration at the cost and expense of the Licensee. In the event of the removal by the Licensor of the property of the Licensee and of the restoration of the roadbed and property as herein provided, the Licensor shall in no manner be liable to the Licensee for any damage sustained by the Licensee for or on account thereof, and such removal and restoration shall in no manner prejudice or impair any right of action for damages, or otherwise, that the Licensor may have against the Licensee.

Section 12. WAIVER OF BREACH.

The waiver by the Licensor of the breach of any condition, covenant or agreement herein contained to be kept, observed and performed by the Licensee shall in no way impair the right of the Licensor to avail itself of any remedy for any subsequent breach thereof.

Section 13. TERMINATION.

SEE ARTICLE

10



- A If the Licensee does not use the right herein granted or the Pipeline for one (1) year, or if the Licensee continues in default in the performance of any covenant or agreement herein contained for a period of thirty (30) days after written notice from the Licensor to the Licensee specifying such default, the Licensor may, at its option, forthwith immediately terminate this Agreement by written notice.
- B In addition to the provisions of subparagraph (a) above, this Agreement may be terminated by written notice given by either party hereto to the other on any date in such notice stated, not less, however, than thirty (30) days subsequent to the date upon which such notice shall be given.
- C. Notice of default and notice of termination may be served personally upon the Licensee or by mailing to the last known address of the Licensee. Termination of this Agreement for any reason shall not affect any of the rights or obligations of the parties hereto which may have accrued, or liabilities, accrued or otherwise, which may have arisen prior thereto.

Section 14. AGREEMENT NOT TO BE ASSIGNED.

The Licensee shall not assign this Agreement, in whole or in part, or any rights herein granted, without the written consent of the Licensor, and it is agreed that any transfer or assignment or attempted transfer or assignment of this Agreement or any of the rights herein granted, whether voluntary, by operation of law, or otherwise, without such consent in writing, shall be absolutely void and, at the option of the Licensor, shall terminate this Agreement.

Section 15. SUCCESSORS AND ASSIGNS.

Subject to the provisions of Section 14 hereof, this Agreement shall be binding upon and inure to the benefit of the parties hereto, their heirs, executors, administrators, successors and assigns.

EXHIBIT C

**Union Pacific Railroad Company
Insurance Exhibit**

PART 1: GENERAL INSTRUCTIONS AND REQUIREMENTS:

Prior to execution of this License, Licensee shall furnish Railroad with a certificate(s) of insurance, executed by a duly authorized representative of each insurer, showing compliance with all insurance required by this License.

All certificates of insurance and correspondence shall be addressed and sent to:

Union Pacific Railroad Company
Real Estate Department – Folder No.: 2531-30
1400 Douglas St., STOP 1690
Omaha, NE 68179-1690

All insurance policies must be written by a reputable insurance company acceptable to Railroad or with a current Best's Insurance Guide Rating of A- and Class VII or better, and authorized to do business in the state(s) in which the work is to be performed.

All policies required by this License shall provide coverage for punitive damages unless (a) insurance coverage may not lawfully be obtained for any punitive damages that may arise under this License, or (d) all punitive damages are prohibited by all states in which this License will be performed.

The fact that insurance is obtained by Licensee will not be deemed to release or diminish the liability of Licensee, including, without limitation, liability under the indemnity provisions of this License. Damages recoverable by Railroad from Licensee or any third party will not be limited by the amount of the required insurance coverage.

PART 2: SPECIFIC INSURANCE LIMITS AND REQUIREMENTS

Licensee shall, at its sole cost and expense, procure and maintain during the life of this License (except as otherwise provided in this License) the following insurance coverage:

A. **Commercial General Liability Insurance** written on ISO Occurrence form CG 00 01 12 04 (or a substitute form providing equivalent coverage) with limits of not less than:

- \$2,000,000 Each Occurrence
- \$4,000,000 Aggregate

This policy must also contain the following endorsements (which must be stated on the certificate of insurance):

- **Additional Insured Endorsement** ISO Form CG 20 26 (or a substitute form providing equivalent coverage).

The coverage provided to Railroad as additional insured shall, to the extent provided under ISO Additional Insured Endorsement Form CG 20 26, provide coverage for Railroad's negligence whether sole or partial, active or passive, and shall not be limited by Licensee's liability under the indemnity provisions of this License.

- **Contractual Liability - Railroads** ISO Form 24 17 10 01 (or a substitute form providing equivalent coverage) showing "Union Pacific Railroad Company Property" covered by this License as the "Designated Job Site".

B. Business Automobile Liability Insurance written on ISO Form CA 00 01 10 01 (or a substitute form providing equivalent coverage) with a limit of:

- \$2,000,000 each accident.

This policy must contain the following endorsements (which must be stated on the Certificate of Insurance):

- **Designated Insured** ISO Form CA 20 48 02 99 (or a substitute form providing equivalent coverage).
- **Coverage for Certain Operations in Connection with Railroads** ISO Form CA 20 70 10 01 showing "Union Pacific Railroad Property" covered by this License as the "Designated Job Site".
- **Motor Carriers Act Endorsement** OMB Form MCS-90 (if required by law).

C. Workers Compensation Insurance. Coverage must include but not be limited to:

- Licensee's statutory liability under the workers' compensation laws of the state(s) affected by this License. Employers' Liability (Part B) with limits of at least \$500,000 each accident, \$500,000 disease policy limit \$500,000 each employee.
- If Licensee is self-insured, evidence of state approval and excess workers compensation coverage must be provided.
- Licensee shall waive all rights of recovery, and its insurers also waive all rights of subrogation of damages against Railroad and its agents, officers, directors and employees for damages covered by the workers compensation and employers liability obtained by Licensee required in this License. **This waiver must be stated on the certificate of insurance.**

D. Umbrella or excess liability Insurance. If Licensee utilizes umbrella or excess policies to meet limit requirements, these policies must "follow form" and afford no less coverage than the primary policy. If utilized, Licensee shall waive all rights of recovery, and its insurers also waive all rights of subrogation of damages against Railroad and its agents, officers, directors and employees for damages covered by Umbrella or Excess Liability obtained by Licensee required in this License. **This waiver must be stated on the certificate of insurance.**

E. Railroad Protective Liability Insurance. At all times during construction, installation, repair or removal of a pipeline or wire line Licensee or its Contractor must obtain and maintain Railroad Protective Liability insurance written on ISO occurrence form CG 00 35 12 04 (or a substitute form providing equivalent coverage) on behalf of Railroad as named insured, with a limit of not less than \$2,000,000 per occurrence and an aggregate of \$6,000,000. A **binder stating the policy is in place must be submitted to Railroad before the work may be commenced** and until the original policy is forwarded to Railroad.

EXHIBIT D

MINIMUM SAFETY REQUIREMENTS

The term "employees" as used herein refer to all employees of Licensee or its contractors, subcontractors, or agents, as well as any subcontractor or agent of any Contractor.

I. Clothing

- A. All employees will be suitably dressed to perform their duties safely and in a manner that will not interfere with their vision, hearing, or free use of their hands or feet.

Specifically, employees must wear:

- (I) Waist-length shirts with sleeves.
- (ii) Trousers that cover the entire leg. If flare-legged trousers are worn, the trouser bottoms must be tied to prevent catching.
- (iii) Footwear that covers their ankles and has a defined heel. Employees working on bridges are required to wear safety-toed footwear that conforms to the American National Standards Institute (ANSI) and FAR footwear requirements.

- B. Employees shall not wear boots (other than work boots), sandals, canvas-type shoes, or other shoes that have thin soles or heels that are higher than normal.
- C. Employees must not wear loose or ragged clothing, neckties, finger rings, or other loose jewelry while operating or working on machinery.

II. Personal Protective Equipment

Employees shall wear personal protective equipment as specified by Railroad rules, regulations, or recommended or requested by the Railroad Representative.

- (I) Hard hat that meets the American National Standard (ANSI) Z89.1 – latest revision. Hard hats should be affixed with Contractor's company logo or name.
- (ii) Eye protection that meets American National Standard (ANSI) for occupational and educational eye and face protection, Z87.1 – latest revision. Additional eye protection must be provided to meet specific job situations such as welding, grinding, etc.
- (iii) Hearing protection, which affords enough attenuation to give protection from noise levels that will be occurring on the job site. Hearing protection, in the form of plugs or muffs, must be worn when employees are within:
 - 100 feet of a locomotive or roadway/work equipment
 - 15 feet of power operated tools
 - 150 feet of jet blowers or pile drivers

- 150 feet of retarders in use (when within 10 feet, employees must wear dual ear protection – plugs and muffs)
 - (iv) Other types of personal protective equipment, such as respirators, fall protection equipment, and face shields, must be worn as recommended or requested by the Railroad Representative.

III. On Track Safety

Contractor is responsible for compliance with the Federal Railroad Administration's Roadway Worker Protection regulations – 49CFR214, Subpart C and Railroad's On-Track Safety rules. Under 49CFR214, Subpart C, railroad contractors are responsible for the training of their employees on such regulations. In addition to the instructions contained in Roadway Worker Protection regulations, all employees must:

- (I) Maintain a minimum distance of at least twenty-five (25) feet to any track unless the Railroad Representative is present to authorize movements.
- (ii) Wear an orange, reflectorized work wear approved by the Railroad Representative.
- (iii) Participate in a job briefing that will specify the type of On-Track Safety for the type of work being performed. Contractor must take special note of limits of track authority, which tracks may or may not be fouled, and clearing the track. Contractor will also receive special instructions relating to the work zone around machines and minimum distances between machines while working or traveling.

IV. Equipment

- A. It is the responsibility of Contractor to ensure that all equipment is in a safe condition to operate. If, in the opinion of the Railroad Representative, any of Contractor's equipment is unsafe for use, Contractor shall remove such equipment from Railroad's property. In addition, Contractor must ensure that the operators of all equipment are properly trained and competent in the safe operation of the equipment. In addition, operators must be:
 - Familiar and comply with Railroad's rules on lockout/tag out of equipment.
 - Trained in and comply with the applicable operating rules if operating any hay-rail equipment on-track.
 - Trained in and comply with the applicable air brake rules if operating any equipment that moves rail cars or any other rail bound equipment.
- B. All self-propelled equipment must be equipped with a first-aid kit, fire extinguisher, and audible back-up warning device.
- C. Unless otherwise authorized by the Railroad Representative, all equipment must be parked a minimum of twenty-five (25) feet from any track. Before leaving any equipment unattended, the operator must stop the engine and properly secure the equipment against movement.
- D. Cranes must be equipped with three orange cones that will be used to mark the working area of the crane and the minimum clearances to overhead power lines.

V. General Safety Requirements

- A. Contractor shall ensure that all waste is properly disposed of in accordance with applicable federal and state regulations.
- B. Contractor shall ensure that all employees participate in and comply with a job briefing conducted by the Railroad Representative, if applicable. During this briefing, the Railroad Representative will specify safe work procedures, (including On-Track Safety) and the potential hazards of the job. If any employee has any questions or concerns about the work, the employee must voice them during the job briefing. Additional job briefings will be conducted during the work as conditions, work procedures, or personnel change.
- C. All track work performed by Contractor meets the minimum safety requirements established by the Federal Railroad Administration's Track Safety Standards 49CFR213.
- D. All employees comply with the following safety procedures when working around any railroad track:
 - (I) Always be on the alert for moving equipment. Employees must always expect movement on any track, at any time, in either direction.
 - (ii) Do not step or walk on the top of the rail, frog, switches, guard rails, or other track components.
 - (iii) In passing around the ends of standing cars, engines, roadway machines or work equipment, leave at least 20 feet between yourself and the end of the equipment. Do not go between pieces of equipment if the opening is less than one car length (50 feet).
 - (iv) Avoid walking or standing on a track unless so authorized by the employee in charge.
 - (v) Before stepping over or crossing tracks, look in both directions first.
 - (vi) Do not sit on, lie under, or cross between cars except as required in the performance of your duties and only when track and equipment have been protected against movement.
- E. All employees must comply with all federal and state regulations concerning workplace safety.

NEW

DOCUMENT

RECORDING REQUESTED BY

(D)

AND WHEN RECORDED MAIL TO

Name Street
Address City
State
Zip 

SPACE ABOVE THIS LINE FOR RECORDER'S USE

RELMIS: B-202.52-X(N)

THIS INDENTURE, made this 20th day of March, 1980, by and between SOUTHERN PACIFIC TRANSPORTATION COMPANY, a Delaware corporation, herein termed "Railroad," and FRESNO METROPOLITAN FLOOD CONTROL DISTRICT, a body politic and corporate, Suite 600, Rowell Building, Fresno, California 93721, herein termed "Grantee;"

WITNESSETH:

1. Railroad hereby grants to Grantee, subject to the reservations, covenants and conditions herein contained, the right to construct, reconstruct, maintain and operate a thirty (30) inch reinforced concrete storm drain, hereinafter termed "structure," in, upon, along, across and beneath the property and tracks of Railroad, at or near Fresno, in the County of Fresno, State of California, crossing the center line of said tracks at Engineer's Station 5771+95, Mile Post 202.52, in the location shown on the print of Railroad's Drawing A-17285, Sheet No. 1, dated January 23, 1980, attached and made a part hereof.

Said structure shall be installed in accordance with minimum requirements of Form C. S. 1741, also attached and made a part hereof.

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2. In the event Railroad shall at any time so require, Grantee, at Grantee's expense, shall reconstruct, alter or otherwise improve said structure upon receipt of written notice from Railroad so to do; provided, however, that this provision shall not be applicable if said structure has been constructed to accommodate railroad trackage across the full width of Railroad's operating right of way.

3. This grant is subject and subordinate to the prior and continuing right of Railroad, its successors and assigns, to use all the property described herein in the performance of its duty as a common carrier and, for that purpose, there is reserved unto Railroad, its successors and assigns, the right (consistent with the rights herein granted) to construct, reconstruct, maintain and use existing and future railroad tracks, facilities and appurtenances and existing and future transportation, communication and pipeline facilities and appurtenances in, upon, over, under, across and along said property.

4. This grant is subject to all licenses, leases, easements, restrictions, conditions, covenants, encumbrances, liens and claims of title which may affect said property, and the word "grant", as used herein, shall not be construed as a covenant against the existence of any thereof.

5. The rights herein granted to Grantee shall lapse and become void if the construction of said structure upon said property is not commenced within one (1) year from the date first herein written.

6. Grantee shall bear the entire cost and expense of constructing, reconstructing and maintaining said structure upon said property. Grantee agrees that all work upon or in connection with said structure shall be done at such times and in such manner as not to interfere in any way whatsoever with the operations of Railroad. The plans for and the construction or reconstruction of said structure shall be subject to the approval of Railroad. Grantee agrees to give Railroad five (5) days' written notice prior to commencement of any work of construction or reconstruction.

Grantee agrees to reimburse Railroad for the cost and expense to Railroad of furnishing any materials or performing any labor in connection with the construction, reconstruction, maintenance and removal of said structure, including, but not limited to, the installation and removal of such falsework and other protection beneath or along Railroad's tracks and the furnishing of such watchmen, flagmen and inspectors as Railroad deems necessary.

7. Grantee, its agents and employees, shall have the privilege of entry on said property for the purpose of constructing, reconstructing, maintaining and making necessary repairs to said structure. Grantee agrees to keep said property and said structure in good and

safe condition, free from waste, so far as affected by Grantee's operations, to the satisfaction of Railroad, failing in which Railroad may perform the necessary work at the expense of Grantee, which expense Grantee agrees to pay to Railroad upon demand.

8. In the event any work upon or in connection with said structure or its appurtenances, to be done upon or adjacent to the tracks and property of Railroad, should be let to a contractor by Grantee, such work shall not be begun until such contractor shall have first entered into an agreement with Railroad indemnifying Railroad against all claims, liability, cost and expense growing out of the work to be done by such contractor.

Such contractor shall furnish a surety bond in amount and form satisfactory to Railroad, guaranteeing the faithful performance of all the terms, covenants and conditions contained in said agreement and a certified copy of an insurance policy in form and amounts satisfactory to Railroad covering the contractual liability assumed by contractor in said agreement.

9. Grantee shall assume all risk of damage to said structure and appurtenances and other property of Grantee, or in custody of Grantee, while upon or near the property of Railroad, caused by or contributed to in any way by the construction, operation, maintenance or presence of Railroad's line of railroad at the above-mentioned location; provided, however, that Railroad shall assume responsibility for damage to said structures or appurtenances caused solely by the negligent construction or reconstruction of railroad facilities at this location.

10. Should Grantee, its successors and assigns, at any time abandon the use of said property or any part thereof, or fail at any time to use the same for the purpose contemplated herein for a continuous period of one (1) year, the right hereby given shall cease to the extent of the use so abandoned or discontinued and Railroad shall at once have the right, in addition to, but not in qualification of, the rights hereinabove reserved, to resume exclusive possession of said property or the part thereof the use of which is so discontinued or abandoned.

Upon termination of the rights and privileges hereby granted, Grantee, at its own cost and expense, agrees to remove said structure from said property and restore said property as nearly as practicable to the same state and condition in which it existed prior to the construction of said structure. Should Grantee in such event fail, neglect or refuse to remove said structure and restore said property, such removal and restoration may be performed by Railroad, at the expense of Grantee, which expense Grantee agrees to pay to

STATE OF CALIFORNIA
City and County of San Francisco)

On this 24th day of March in the year One Thousand Nine Hundred and Eighty, before, me, CHRISTOPHER M. LUNDIN (One Market Plaza), a Notary Public in and for the City and County of San Francisco, State of California, for the City and County of San Francisco, State of California, personally appeared W. J. Honold known to me to be the Assistant Manager, Contract Department, of the corporation described in and that executed the within instrument, and also known to me to be the person who executed it on behalf of the corporation therein named and he acknowledged to me that such corporation executed the same.



CHRISTOPHER M. LUNDIN
NOTARY PUBLIC CALIFORNIA
PRINCIPAL PLACE OF BUSINESS IN
CITY AND COUNTY OF
SAN FRANCISCO

My Commission Expires April 8, 1983

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal at my office in the City and County of San Francisco, the day and year in this certificate first above written.

Christopher M. Lundin

Notary Public in and for the City and County of San Francisco, State of California

STATE OF CALIFORNIA)
)
COUNTY OF FRESNO)

On April 10, 1980, before me, the undersigned, a Notary Public in and for said State, personally appeared Doug Harrison, known to me to be the General Manager-Secretary of the public corporation that executed the within instrument, known to me to be the person who executed the within instrument on behalf of the public corporation therein named, and acknowledged to me that such public corporation executed the within instrument pursuant to a resolution of its Board of Directors.

WITNESS my hand and official seal.



Teresa M. King
Notary Public, State of California

Railroad upon demand.

11. This indenture shall inure to the benefit of and be binding upon the successors and assigns of the parties hereto.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed in duplicate as of the day and year first herein written.

SOUTHERN PACIFIC TRANSPORTATION COMPANY,

By W. J. Donald Assistant Manager
(Title) Contract Dgr.

Attest: W. J. Donald
Assistant Secretary

FRESNO METROPOLIZAN FLOOD CONTROL DISTRICT,

By Long L. Jamison - Gen. Mgr. Sec.
(Title)

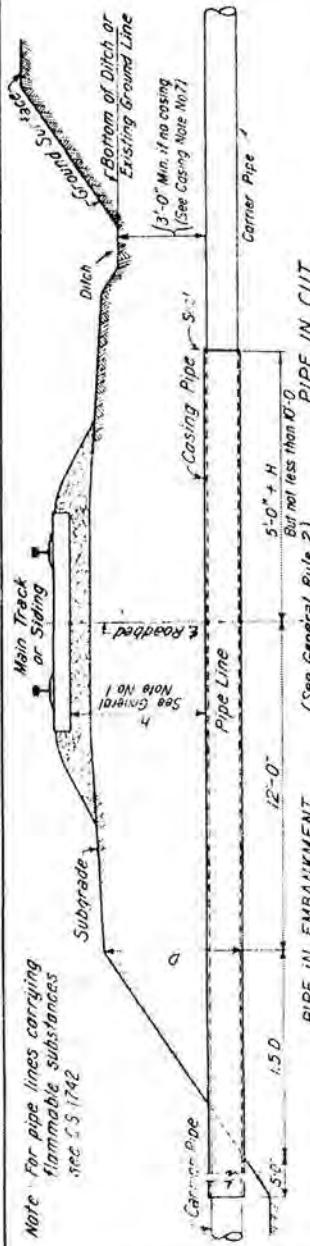
Attest: Bob Van Wyk
(Title) ASSIST. GEN. MGR.

TABLE I
THICKNESS OF PIPE CASINGS
FOR SUPPORTING TRACK

Inside Diameter Inches	Corrugated Iron Pipe U.S. Std. Gage No.	Smooth Steel Pipe Inches
4 to 10	14	18
12	14	16
15, 18	14	16
21, 24	12	16
30, 36	10	16
48, 54, 60	8	

TABLE II
CONCRETE ENCASING
FOR PIPES

Number of Longitudinal Bars	A Inches	d Inches
4	10, 12	4
5	15	5
8	21, 24, 27	6
8	30	7
12	33	8
12	36	9

RULES GOVERNING THE INSTALLATION OF PIPE LINES TRANSMITTING
WATER OR OTHER NON-FLAMMABLE SUBSTANCES WHEN CROSSING
UNDER TRACKS

GENERAL

1. Distance H from bottom of tie to top of pipe, casing or concrete encasement shall not be less than 3'-0". See provision in General Rule 3 for concrete encasement spell.

2. Any pipe lines crossing any track shall receive a casing provided the carrier pipe is of sufficient size to support the track and has weather-tight joints. For such pipe lines, casing lighter than specified in Table I for supporting track may be used for installing pipe, provided the space between carrier pipe and casing is backfilled with grout or sand.

If carrier pipe does not have sufficient strength to support track, casing or concrete encasement must be installed. Length of casing measured at right angles to track shall extend such distance off center line of track five feet plus ten feet except that where casing is installed through railroad embankments it shall extend beyond slope of embankment.

3. When practicable, couplings and corner pipes may be installed by the jacking or boring methods. If these methods are used the minimum depth from bottom of tie to top of pipe or bore must be 3'-0" or one pipe diameter, whichever is greater; however, where there is good cohesive soil, the depth may be less than one pipe diameter, but not less than 3'-0", with special permission of the Chief Engineer. If installed by tunneling or boring, the space around casing or carrier pipe must be backfilled with grout or sand.

4. No pipe lines shall be laid through or under bridges or culverts, where there is likelihood of restricting the area required for the passage for which the bridges or culverts were built, or endangering foundations of important structures.

5. Additional tracks are constructed in the future, the protection shall be correspondingly extended.

6. Inverted siphons for drainage or irrigation ditches (C.S. 1705) using steel pipe with welded or screwed joints, or corrugated iron pipe with offset flanges and flanges close riveted and soldered, having a diameter of 48 inches or less and the required strength to support track, may be installed without a casing.

CASING

1. Casing may be of either corrugated iron, smooth steel or concrete.

It shall have sufficient strength to support track, except that a lighter casing may be used for installation purposes, as provided in General Rule 2 above.

2. Nestable (knocked down) type plain galvanized corrugated pipe of gauge corresponding to requirements of Table I may be used to protect carrier pipes that are already in place.

2. Nestled casing for supporting track shall conform to thicknesses shown in Table I and shall have joints of either screw, welded or riveted type. It shall be galvanized or shall be dipped in preservative material and thoroughly coated inside and outside. If preservative material cannot be used on inside of casing, then the casing shall be at least one gauge or $\frac{1}{8}$ thicker than otherwise required.
3. Concrete casing for supporting track shall have the strength specified in current A.I.T.S. Serial Designation C-76, Class IV. All joints shall be water-tight and of an approved type of construction.
4. The inside diameter of casing shall be at least 2 inches greater than the largest outside diameter of carrier pipe.
5. Sizes of casing larger than shown in Table I are special cases and will be decided upon their merits.
6. Casing shall be so installed as to prevent formation of waterway under the railway. It shall have even bearing throughout its length and shall slope toward one end.
7. Regardless of the strength of carrier pipe, casings must be provided at all locations where pipe crosses under drainage ditches if cover is less than 3'-0". Casing under ditch may be separate from, or a continuation of, casing under track, and must extend a minimum of 1'-0" beyond top strainers on each side of the ditch.
8. When placed in open cut, pipe lines having diameter of 36" or less when crossing tracks other than main tracks, and sidings, may be encased in concrete as shown in Table II below ground, they shall be sealed to suitably protect the entrance of foreign material which might prevail ready removal of the carrier pipe where the ends of the casing are at or above ground surface and above high water level; they may be left open, provided drainage is afforded in such a manner that leakage will be conducted away from the roadway and structures.
9. Where the ends of the casing are at or above ground surface and above high water level, they may be left open, provided drainage is afforded in such a manner that leakage will be conducted away from the roadway and structures.

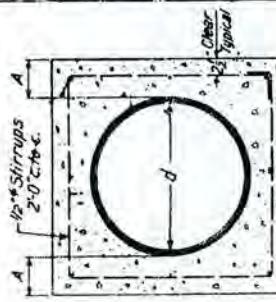
CARRIER PIPE

1. Carrier pipe shall be of an approved type with water-tight joints.
2. Corrugated iron, smooth steel or concrete carrier pipe when used without a casing shall have the same strength required above for casings.

3. Cast iron carrier pipe used without a casing shall have a thickness not less than that specified for Class 150 Cast iron pipe.
4. General Rule 2 above.
5. Nestable (knocked down) type plain galvanized corrugated pipe of gauge corresponding to requirements of Table I may be used to protect carrier pipes that are already in place.

SOUTHERN PACIFIC LINES
COMMON STANDARD
PIPE LINES

FOR NON-FLAMMABLE SUBSTANCES
CROSSING UNDER TRACK
ADOPTED APR 20, 1953
REVISED JAN 3, 1970
NO SCALE



BEFORE THE BOARD OF DIRECTORS OF THE
FRESNO METROPOLITAN FLOOD CONTROL DISTRICT

RESOLUTION AUTHORIZING EXECUTION OF DOCUMENTS
BY THE GENERAL MANAGER OR ASSISTANT GENERAL MANAGER IN
THE ABSENCE OF CHAIRMAN

WHEREAS, the bylaws of the Fresno Metropolitan Flood Control District provide among other things that the Chairman of the Board of Directors shall sign all contracts, deeds and other instruments made by the District; and,

WHEREAS, the Chairman is not always immediately available for execution of documents so authorized to be executed by the Board of Directors, and it is in the best interests of this District that the General Manager and, in his absence, the Assistant General Manager be authorized to execute instruments on behalf of the District.

NOW, THEREFORE, BE IT RESOLVED that the General Manager of the Fresno Metropolitan Flood Control District be and he is hereby authorized to execute contracts, deeds and other instruments authorized by the Board of Directors, with the same force and effect as though the same were executed by the Chairman.

BE IT FURTHER RESOLVED that the Assistant General Manager of the Fresno Metropolitan Flood Control District be and he is hereby authorized to execute contracts, deeds and other instruments authorized by the Board of Directors of the District, in the absence of the Chairman and of the General Manager, with the same force and effect as though the same were executed by the Chairman.

BE IT FURTHER RESOLVED that Resolution Nos. 395, 533, and 767, adopted July 12, 1965, March 11, 1968, and December 13, 1971 be and they are hereby rescinded.

PASSED AND ADOPTED this 9th day of July 1979 by the
following vote, to wit:

AYES: Directors Beery, Ilg, Levy, Lansman and
Yamamoto

NOES: None.

ABSENT: Directors Martin, O'Dell, Reich and Thaxter

NEW

DOCUMENT

RECORDING REQUESTED BY

John L. B. Smith

And When Recorded Mail This Deed and, Unless
Otherwise Shown Below, Mail Tax Statements To:

NAME Fresno Metropolitan Flood
STREET Control District
ADDRESS 5469 East Olive Avenue
CITY Fresno, California 93727
STATE
ZIP

Title Order No. Escrow No.

CENTRAL TITLE COMPANY

RECORDED IN OFFICIAL RECO.
FRESNO COUNTY, CALIFORNIA.
AT MIN PAST 10 AM

JUN 21 1990

GALEN LARSON
County Recorder

FEE
\$ 100 Lee

SPACE ABOVE THIS LINE FOR RECORDER'S USE

DOCUMENTARY TRANSFER TAX \$ 5
COMPUTED ON FULL VALUE OF PROPERTY CONVEYED,
OR COMPUTED ON FULL VALUE LESS LIENS AND
ENCUMBRANCES REMAINING AT TIME OF SALE

Signature of Declarant or Agent Determining Tax, Firm Name

GRANT DEED

APN 458-133-13

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,
LAURIE M. LOPERENA, WHO ACQUIRED TITLE AS LAURIE L. LOPERENA, LINDA A.
LOPERENA, LARRY J. LOPERENA, LINDSEY J. LOPERENA, JACK LOPERENA AND
JOANNE LOPERENA
hereby GRANT(S) to
FRESNO METROPOLITAN FLOOD CONTROL DISTRICT
a California public corporation

the following described real property in the city of Fresno
county of FRESNO state of California:

SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF.

Dated JUNE 12, 1990

STATE OF CALIFORNIA / SS.
COUNTY OF Fresno

On June 12, 1990 before me, the undersigned, a Notary Public in and for said County and State,
personally appeared Laurie M. Loperena,
Linda A. Loperena, Larry J. Loperena
Jack Loperena and Joanne Loperena
and Lindsey J. Loperena

, known to me
to be the person(s) whose name(s) are subscribed to the
within instrument and acknowledged that they
executed the same.

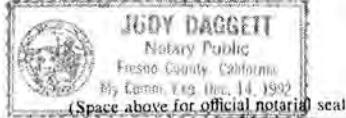
Judy Daggett
Name (Typed or Printed)

Notary Public in and for Said County and State

Laurie M. Loperena
Linda A. Loperena
Linda A. Loperena
Larry J. Loperena
Lindsey J. Loperena

Jack Loperena

Joanne Loperena
JOANNE LOPERA



MAIL TAX STATEMENTS TO PARTY SHOWN ON FOLLOWING LINE: IF NO PARTY SO SHOWN, MAIL AS DIRECTED ABOVE.

Fresno Metropolitan Flood Control District, 5469 E. Olive Ave., Fresno CA 93727
Name Street Address City & State

EI

GRANT DEED



Central Title
Company

4545 N. WEST AVE., SUITE 108 / FRESNO, CA 93705
(209) 225-6216
1241 E. SHAW AVE., SUITE 100 / FRESNO, CA 93710
(209) 226-8861
96 SHAW AVENUE, SUITE 212 / CLOVIS, CA 93612
(209) 299-5706

GRANT DEED



Central Title
Company

□ 4545 N. WEST AVE., SUITE 108 / FRESNO, CA 93705
(209) 225-6216
□ 1241 E. SHAW AVE., SUITE 100 / FRESNO, CA 93710
(209) 226-8861
□ 96 SHAW AVENUE, SUITE 212 / CLOVIS, CA 93612
(209) 299-5706

90072232

CERTIFICATE OF ACCEPTANCE

In accordance with the provisions of 27281 of the Government Code of the State of California, this is to certify that the interest in real property conveyed by the attached instrument dated June 12 19 90, from Laurie M. Loperena, Linda A. Loperena, Larry J. Loperena, Jack Loperena, Joanne Loperena and Lindsey J. Loperena to the Fresno Metropolitan Flood Control District, a public corporation, is hereby accepted by the undersigned Assistant General Manager on behalf of the Board of Directors of the Fresno Metropolitan Flood Control District, pursuant to authority conferred by Resolution No. 1464 of said Board of Directors adopted December 13, 1988, and said District hereby consents to recordation thereof by and through its duly authorized officer.

Dated: June 13, 1990

By: Bob Van Wyk
Bob Van Wyk
Assistant General Manager

90072232

LEGAL DESCRIPTION
LOPRENA PARCEL
APN 458-133-13
BASIN RR-2

A portion of Lots 1 through 7, inclusive, of Roeding Terrace, according to the map thereof recorded September 27, 1911 in Volume 6, Page 58 of Record of Surveys, Fresno County Records, and a portion of Lot 1 of Weihe Home Tract, according to the map thereof recorded November 23, 1905, in Book 3, Page 25 of Record of Surveys, Fresno County Records, and a portion of abandoned North Wesley Avenue more particularly described as follows:

BEGINNING at a point which lies 29.00 feet East of the West line and 30.00 feet North of the South line of said Lot 7 of Roeding Terrace; thence Easterly along a line which lies 30.00 feet North of and parallel with the South line of said Lot 7 and the South line of said Lot 1 of Weihe Home Tract, to a point which lies 50.00 feet East of the West line of said Lot 1; thence Northerly parallel with the West line of said Lot 1, a distance of 135.00 feet; thence Easterly parallel with the South line of said Lot 1, a distance of 75.00 feet; thence Southerly parallel with the West line of said Lot 1, a distance of 135.00 feet to a point on a line which is parallel with and 30.00 feet North of the South line of said Lot 1; thence Easterly along the last mentioned parallel line to the East line of said Lot 1; thence Northerly along the East line of said Lot 1 and the Northeasterly line of said Lot 1 to a point on a line which lies 15.00 feet South of and parallel with the North line of said Lot 1 and the North line of Lots 1 and 2 of said Roeding Terrace; thence Westerly along said parallel line to a point which lies 39.16 feet Westerly of the East line of said Lot 2 of Roeding Terrace; thence Southwesterly along a curve concave to the Southeast with an interior angle of $45^{\circ} 26' 22''$ and a radius of 75.00 feet, an arc distance of 59.48 feet; thence South $44^{\circ} 33' 39''$ West, a distance of 24.20 feet; thence Southerly along a curve concave to the East with an interior angle of $78^{\circ} 35' 10''$ and a radius of 50.00 feet, an arc distance of 68.58 feet; thence South $34^{\circ} 01' 31''$ East, a distance of 54.62 feet; thence Southerly along a curve concave Westerly with an interior angle of $34^{\circ} 01' 31''$ and a radius of 242.00 feet, an arc distance of 143.71 feet; thence Southerly along a line which is 24.00 feet East of, and parallel with the West line of said Lots 4, 5, 6 and 7 to a point which is 35.00 feet North of the South line of said Lot 7; thence Southeasterly to the Point of Beginning.

EXHIBIT "A"

Revised 6/19/90

NEW

DOCUMENT

CENTRAL TITLE COMPANY
RECORDING REQUESTED BY

John L. B. Smith

And When Recorded Mail This Deed and, Unless
Otherwise Shown Below, Mail Tax Statements To:

NAME Fresno Metropolitan Flood
Control District
STREET ADDRESS 5469 East Olive Avenue
CITY, STATE, ZIP Fresno, California 93727

Title Order No. 62064-11-RH No. 62064-11-RH

APN# 458-133-07

CENTRAL TITLE COMPANY

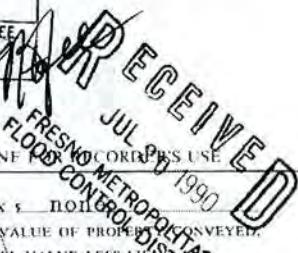
RECORDED IN OFFICIAL RECORDS
FRESNO COUNTY, CALIFORNIA
MIN PAST

JUL 3 1990

GALEN LARSON
County Recorder

FEE
\$
87

90077739



SPACE ABOVE THIS LINE FOR CORRECTION USE

DOCUMENTARY TRANSFER TAX \$
COMPUTED ON FULL VALUE OF PROPERTY CONVEYED
OR COMPUTED ON FULL VALUE LESS LIENS
ENCUMBRANCES REMAINING AT TIME OF SALE

CENTRAL TITLE BY:

Signature of Declarant or Agent determining tax. Firm Name

GRANT DEED

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,

MARY A. SEVERIN, A WIDOW

hereby GRANT(S) to

FRESNO METROPOLITAN FLOOD CONTROL DISTRICT,
a California Public Corporation

the following described real property in the City of Fresno
county of Fresno, state of California.

As is set forth on Exhibit "A" hereto.

Dated June 19, 1990
STATE OF CALIFORNIA, ss.
COUNTY OF FRESNO
On June 19, 1990 before me, the undersigned, a Notary Public in and for said County and State, personally appeared _____

Mary A. Severin
MARY A. SEVERIN

to be the person whose name is subscribed to the she within instrument and acknowledged that she executed the same

Dannell L. Barber

DANNELL L. BARBER

Name (Typed or Printed)

Notary Public in and for Said County and State



(Space above for official notarial seal)

MAIL TAX STATEMENTS TO PARTY SHOWN ON FOLLOWING LINE; IF NO PARTY SO SHOWN, MAIL AS DIRECTED ABOVE
Fresno Metropolitan Flood Control District, 5469 E. Olive Ave., Fresno, Ca 93727

Name

Street Address

City & State

GRANT DEED

GRANT DEED



Central Title
Company

4545 N. WEST AVE., SUITE 108, FRESNO, CA 93705
(209) 225-6216
5191 N. SIXTH ST., SUITE 116, FRESNO, CA 93711
(209) 225-8861
4747 N. FIRST ST., SUITE 116, FRESNO, CA 93726
(209) 224-5940
96 SHAW AVENUE, SUITE 212, CLOVIS, CA 93612
(209) 299-5706
412 POLLASKY AVENUE, CLOVIS, CA 93612
(209) 299-2501



Central Title
Company

4545 N. WEST AVE., SUITE 108, FRESNO, CA 93705
(209) 225-6216
5191 N. SIXTH ST., SUITE 116, FRESNO, CA 93711
(209) 225-8861
4747 N. FIRST ST., SUITE 116, FRESNO, CA 93726
(209) 224-5940
96 SHAW AVENUE, SUITE 212, CLOVIS, CA 93612
(209) 299-5706
412 POLLASKY AVENUE, CLOVIS, CA 93612
(209) 299-2501

90077739

CERTIFICATE OF ACCEPTANCE

In accordance with the provisions of 27281 of the Government Code of the State of California, this is to certify that the interest in real property conveyed by the attached instrument dated

June 19 19 90, from MARY A. SEVERIN

to the Fresno Metropolitan Flood Control District, a public corporation, is hereby accepted by the undersigned Assistant General Manager on behalf of the Board of Directors of the Fresno Metropolitan Flood Control District, pursuant to authority conferred by Resolution No. 1464 of said Board of Directors adopted December 13, 1988, and said District hereby consents to recordation thereof by and through its duly authorized officer.

Dated: June 29, 1990

By: Bob Van Wyk
Bob Van Wyk
Assistant General Manager

90077739

**LEGAL DESCRIPTION
SEVERIN PARCEL
APN 458-133-07
BASIN RR-2**

That portion of Lot 1 of Weihe Home Tract, in the County of Fresno, State of California, according to the map thereof recorded November 23, 1905, in Book 3, Page 25 of Record of Surveys, in the office of the County Recorder of said County, described as follows:

Commencing at a point on the North line of West Franklin Avenue, formerly Mildred Avenue, 50 feet East from the West line of said Lot 1; thence North parallel with the West line of said Lot 1 a distance of 135 feet to a point; thence East parallel with the North line of said West Franklin Avenue a distance of 75 feet to a point; thence South parallel with the West line of said Lot 1 a distance of 135 feet to the North line of said West Franklin Avenue; thence West along the North line of said West Franklin Avenue a distance of 75 feet to the point of commencement.

Subject to conditions, restrictions, reservations, easements and rights of way of record.

EXHIBIT A

NEW

DOCUMENT



PIPELINE CROSSING AGREEMENT

Mile Post: 203.87, Fresno Subdivision
Location: Fresno, Fresno County, California

THIS AGREEMENT is made and entered into as of March 28, 2001, by and between **UNION PACIFIC RAILROAD COMPANY**, a Delaware corporation (hereinafter the "Licensor"), and **FRESNO METROPOLITAN FLOOD CONTROL DISTRICT**, a _____, whose address is 5469 E. Olive Avenue, Fresno, California 93727 (hereinafter the "Licensee").

IT IS MUTUALLY AGREED BY AND BETWEEN THE PARTIES HERETO AS FOLLOWS:

Article I. LICENSE FEE

Upon execution of this Agreement, the Licensee shall pay to the Licensor a one-time license fee of **ONE THOUSAND SEVEN HUNDRED FIFTY-FIVE DOLLARS (\$1,755.00)** and an administrative handling fee of **FIVE HUNDRED DOLLARS (\$500.00)**.

Article II. LICENSOR GRANTS RIGHT.

In consideration of the License Fee to be paid by the Licensee and in further consideration of the covenants and agreements herein contained to be by the Licensee kept, observed and performed, the Licensor hereby grants to the Licensee the right to construct and thereafter, during the term hereof, to maintain and operate only a

96-inch storm water pipeline crossing (hereinafter the "Pipeline")

in the location shown and in conformity with the dimensions and specifications indicated on the attached print dated March 23, 2001, marked Exhibit A. Under no circumstances shall Licensee modify the use of the Pipeline for a purpose other than the above-mentioned, and said Pipeline shall not be used for any other use, whether such use is currently technologically possible, or whether such use may come into existence during the life of this Agreement.

Article III. CONSTRUCTION, MAINTENANCE AND OPERATION.

The grant of right herein made to the Licensee is subject to each and all of the terms, provisions, conditions, limitations and covenants set forth herein and in Exhibit B, hereto attached.

Article IV. IF WORK IS TO BE PERFORMED BY CONTRACTOR.

If a contractor is to do any of the work performed on the Pipeline (including initial construction and subsequent relocation or substantial maintenance and repair work), then the Licensee shall require its contractor to execute the Railroad's form Contractor's Right of Entry Agreement. Licensee acknowledges receipt of a copy of the Contractor's Right of Entry Agreement and understanding of its terms, provisions, and requirements, and will inform its contractor of the need to execute the Agreement. Under no circumstances will Licensee's contractor be allowed onto Lessor's premises without first executing the Contractor's Right of Entry Agreement.

Article V. INSURANCE

- A. The Licensee, at its expense, shall obtain the insurance described in Exhibit B-1, hereto attached. The Licensee will also provide to the Lessor a Certificate of Insurance, identifying Folder No. 1973-94, issued by its insurance carrier confirming the existence of such insurance and that the policy or policies contain the following endorsement:

UNION PACIFIC RAILROAD COMPANY is named as an additional insured with respect to all liabilities arising out of the existence, use or any work performed on or associated with the 'Pipeline' located on Railroad right-of-way at Mile Post 203.87 on the Fresno Subdivision, at or near Fresno, Fresno County, California.

- B. If the Licensee named in this Agreement is a public entity subject to any applicable statutory tort laws, the limits of insurance described in Exhibit B-1 shall be the limits the Licensee then has in effect or which is required by applicable current or subsequent law, whichever is greater, a portion of which may be self-insured with the consent and approval of the Lessor
- C. All insurance correspondence shall be directed to:

Folder No. 1973-94
Union Pacific Railroad Company
Real Estate Department
1800 Farnam Street
Omaha, NE 68102

Article VI. TERM.

This Agreement shall take effect as of the date first herein written and shall continue in full force and effect until terminated as herein provided.

Article VII. AMENDMENT TO EXHIBIT B.

Section 13(b) of Exhibit B, hereto attached, is deleted.

Article VIII. SPECIAL PROVISIONS.

A railroad inspector is required to monitor track movement during jacking under railroad right of way.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date first herein written.

UNION PACIFIC RAILROAD COMPANY

By:

James C. Anthony

Dir Manager Contracts

**FRESNO METROPOLITAN FLOOD
CONTROL DISTRICT**

By:

Jerry Takemoto

Title

District Engineer

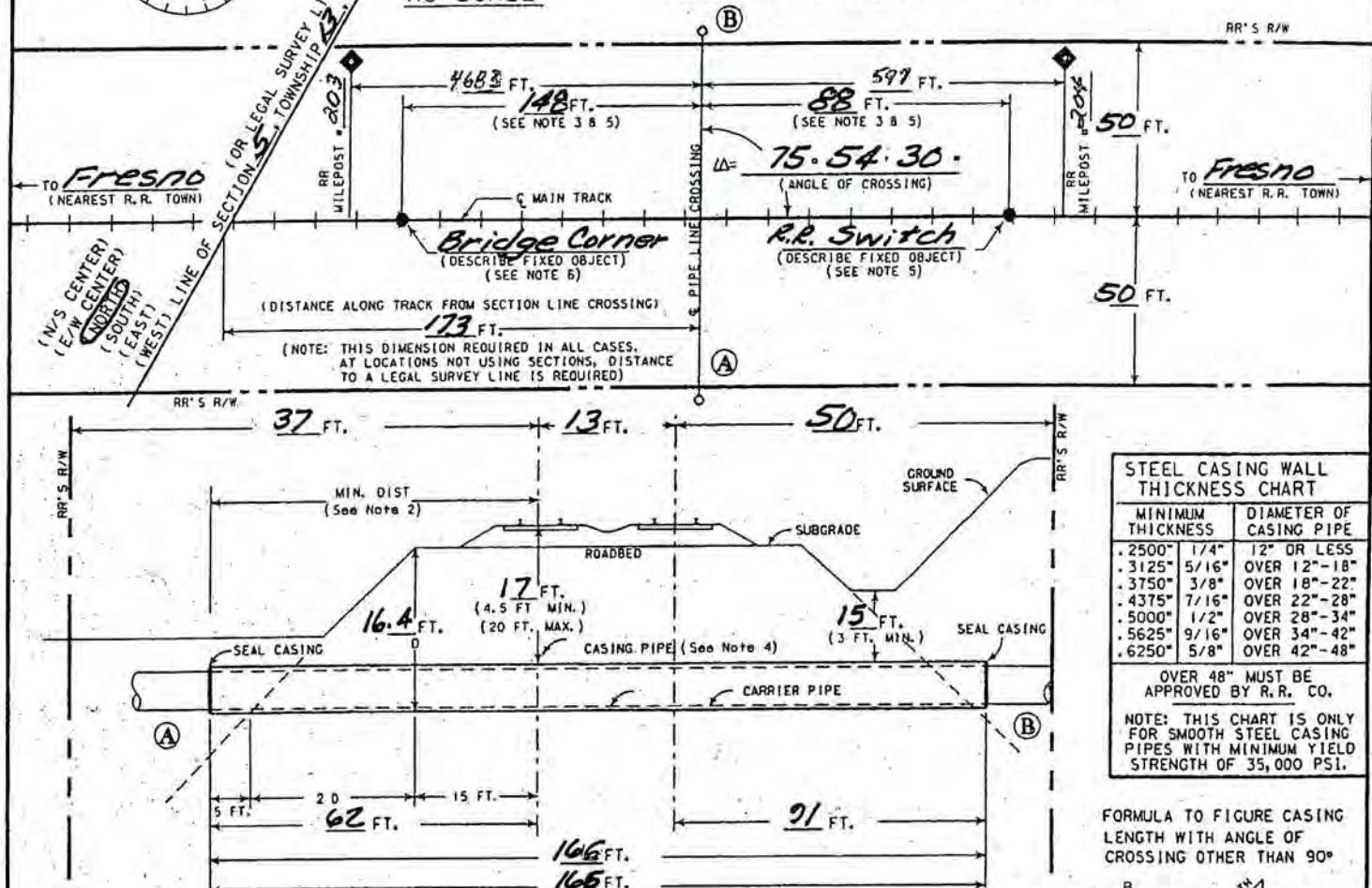
PLACE ARROW INDICATING NORTH DIRECTION RELATIVE TO CROSSING



FORM DR-0404-B
REV. 5-15-98
WWW.UPR.COM

ENCASED NON-FLAMMABLE PIPELINE CROSSING

NOTE: ALL AVAILABLE DIMENSIONS MUST BE FILLED IN TO PROCESS THIS APPLICATION.



NOTES : (CASING LENGTH WHEN MEASURED ALONG PIPELINE.)

- 1) ALL HORIZONTAL DISTANCES TO BE MEASURED AT RIGHT ANGLES FROM $\frac{1}{2}$ OF TRACK.
- 2) CASING TO EXTEND BEYOND THE $\frac{1}{2}$ OF TRACK AT RIGHT ANGLES THE GREATER OF 20 + 20 FT., OR 30 FT., AND BEYOND LIMIT OF RAILROAD RIGHT-OF-WAY IF NECESSARY TO PROVIDE PROPER LENGTH OUTSIDE OF TRACK.
- 3) MINIMUM OF 50' FROM THE END OF ANY RAILROAD BRIDGE, $\frac{1}{2}$ OF ANY CULVERT, OR FROM ANY SWITCHING AREA.
- 4) SIGNAL REPRESENTATIVE MUST BE PRESENT DURING INSTALLATION IF RAILROAD SIGNALS ARE IN THE VICINITY OF CROSSING.
- 5) ALLOWABLE FIXED OBJECTS INCLUDE: BACKWALLS OF BRIDGES; $\frac{1}{2}$ OF ROAD CROSSINGS & OVERHEAD VIADUCTS (GIVE ROAD NAME); OR CULVERTS.
- 6) CASING AND CARRIER PIPE MUST BE PLACED A MINIMUM OF 2 FEET BELOW THE EXISTING FIBER OPTIC CABLE. ANY EXCAVATION REQUIRED WITHIN 5 FEET OF THE EXISTING FIBER OPTIC CABLE MUST BE HAND DUG.

- A) IS PIPELINE CROSSING WITHIN DEDICATED STREET? YES; NO;
- B) IF YES, NAME OF STREET N/A
- D) DISTRIBUTION LINE OR TRANSMISSION LINE
- C) CARRIER PIPE : COMMODITY TO BE CONVEYED Storm Water
OPERATING PRESSURE Gravity PSI
WALL THICKNESS 2"; DIAMETER 96 1/16"; MATERIAL RGP CP (Class II)
- E) CASING PIPE : WALL THICKNESS None; DIAMETER None; MATERIAL None
NOTE : CASING MUST HAVE 2" CLEARANCE BETWEEN GREATEST OUTSIDE DIAMETER OF CARRIER PIPE AND INTERIOR DIAMETER OF CASING PIPE. WHEN FURNISHING DIMENSIONS, GIVE OUTSIDE OF CARRIER PIPE AND INSIDE OF CASING PIPE.
- F) METHOD OF INSTALLING CASING PIPE UNDER TRACK(S): DRY BORE AND JACK (WET BORE NOT PERMITTED); TUNNEL; OTHER
- G) WILL CONSTRUCTION BE BY AN OUTSIDE CONTRACTOR? YES; NO;
- H) DISTANCE FROM CENTER LINE OF TRACK TO NEAR FACE OF BORING AND JACKING PITS WHEN MEASURED AT RIGHT ANGLES TO TRACK 60' (30' MIN.)
- I) APPLICANT HAS CONTACTED 1-800-336-9193, U.P. COMMUNICATION DEPARTMENT, AND HAS DETERMINED FIBER OPTIC CABLE DOES; DOES NOT; EXIST IN VICINITY OF WORK TO BE PERFORMED. TICKET NO.

EXHIBIT "A"

FOR RAILROAD USE ONLY
UNION PACIFIC RAILROAD CO.

FRESNO

(SUBDIVISION)

M. P. 203.87 E. S. 5844+20'

ENCASED STORMWATER P/L CROSSING AT
FRESNO FRESNO CA

(NEAREST CITY) (COUNTY) (STATE)

FRESNO METROPOLITAN FLOOD CONTROL DISTRICT

(APPLICANT)

RR FILE NO. 1973-94 DATE 3/23/01

WARNING

IN ALL OCCASIONS, U. P. COMMUNICATIONS DEPARTMENT MUST BE CONTACTED IN ADVANCE OF ANY WORK TO DETERMINE EXISTENCE AND LOCATION OF FIBER OPTIC CABLE.
PHONE : 1-800-336-9193

EXHIBIT B

Section 1. LIMITATION AND SUBORDINATION OF RIGHTS GRANTED.

(a) The foregoing grant of right is subject and subordinate to the prior and continuing right and obligation of the Lessor to use and maintain its entire property including the right and power of the Lessor to construct, maintain, repair, renew, use, operate, change, modify or relocate railroad tracks, signal, communication, fiber optics, or other wirelines, pipelines and other facilities upon, along or across any or all parts of its property, all or any of which may be freely done at any time or times by the Lessor without liability to the Licensee or to any other party for compensation or damages.

(b) The foregoing grant is also subject to all outstanding superior rights (including those in favor of licensees and lessees of the Lessor's property, and others) and the right of the Lessor to renew and extend the same, and is made without covenant of title or for quiet enjoyment.

Section 2. CONSTRUCTION, MAINTENANCE AND OPERATION.

(a) The Pipeline shall be constructed, operated, maintained, repaired, renewed, modified and/or reconstructed by the Licensee in strict conformity with Union Pacific Railroad Co. Common Standard Specification 1029 adopted November 1949, and all amendments thereof and supplements thereto, which by this reference is hereby made a part hereof, except as may be modified and approved by the Lessor's Vice President-Engineering Services. In the event such Specification conflicts in any respect with the requirements of any federal, state or municipal law or regulation, such requirements shall govern on all points of conflict, but in all other respects the Specification shall apply.

(b) All work performed on property of the Lessor in connection with the construction, maintenance, repair, renewal, modification or reconstruction of the Pipeline shall be done to the satisfaction of the Lessor.

(c) Prior to the commencement of any work in connection with the construction, maintenance, repair, renewal, modification, relocation, reconstruction or removal of the Pipeline where it passes underneath the roadbed and track or tracks of the Lessor, the Licensee shall submit to the Lessor plans setting out the method and manner of handling the work, including the shoring and cribbing, if any, required to protect the Lessor's operations, and shall not proceed with the work until such plans have been approved by the Vice President-Engineering Services of the Lessor and then the work shall be done to the satisfaction of the Vice President-Engineering Services or his authorized representative. The Lessor shall have the right, if it so elects, to provide such support as it may deem necessary for the safety of its track or tracks during the time of construction, maintenance, repair, renewal, modification, relocation, reconstruction or removal of the Pipeline, and, in the event the Lessor provides such support, the Licensee shall pay to the Lessor, within fifteen (15) days after bills shall have been rendered therefor, all expense incurred by the Lessor in connection therewith, which expense shall include all assignable costs.

(d) The Licensee shall keep and maintain the soil over the Pipeline thoroughly compacted and the grade even with the adjacent surface of the ground.

Section 3. NOTICE OF COMMENCEMENT OF WORK.

If an emergency should arise requiring immediate attention, the Licensee shall provide as much notice as practicable to Lessor before commencing any work. In all other situations, the Licensee shall notify the Lessor at least ten (10) days (or such other time as the Lessor may allow) in advance of the commencement of any work upon property of the Lessor in connection with the construction, maintenance, repair, renewal, modification, reconstruction, relocation or removal of the Pipeline. All such work shall be prosecuted diligently to completion.

Section 4. LICENSEE TO BEAR ENTIRE EXPENSE.

The Licensee shall bear the entire cost and expense incurred in connection with the construction, maintenance, repair and renewal and any and all modification, revision, relocation, removal or reconstruction of the Pipeline, including any and all expense which may be incurred by the Lessor in connection therewith for supervision, inspection, flagging, or otherwise.

Section 5. REINFORCEMENT, RELOCATION OR REMOVAL OF PIPELINE.

- (a) The license herein granted is subject to the needs and requirements of the Licensor in the operation of its railroad and in the improvement and use of its property, and the Licensee shall, at the sole expense of the Licensee, reinforce the Pipeline, or move all or any portion of the Pipeline to such new location as the Licensor may designate, whenever, in the furtherance of its needs and requirements, the Licensor shall find such action necessary or desirable.
- (b) All the terms, conditions and stipulations herein expressed with reference to the Pipeline on property of the Licensor in the location hereinbefore described shall, so far as the Pipeline remains on the property, apply to the Pipeline as modified, changed or relocated within the contemplation of this section.

Section 6. NO INTERFERENCE WITH LICENSOR'S OPERATION.

The Pipeline and all parts thereof within and outside of the limits of the property of the Licensor shall be constructed and, at all times, maintained, repaired, renewed and operated in such manner as to cause no interference whatsoever with the constant, continuous and uninterrupted use of the tracks, property and facilities of the Licensor, and nothing shall be done or suffered to be done by the Licensee at any time that would in any manner impair the safety thereof.

Section 7. PROTECTION OF FIBER OPTIC CABLE SYSTEMS.

- (a) Fiber optic cable systems may be buried on the Licensor's property. Protection of the fiber optic cable systems is of extreme importance since any break could disrupt service to users resulting in business interruption and loss of revenue and profits. Licensee shall telephone the Licensor at 1-800-336-9193 (a 24-hour number) to determine if fiber optic cable is buried anywhere on the Licensor's premises to be used by the Licensee. If it is, Licensee will telephone the telecommunications company(ies) involved, arrange for a cable locator, make arrangements for relocation or other protection of the fiber optic cable, all at Licensee's expense, and will commence no work on the right of way until all such protection or relocation has been accomplished. Licensee shall indemnify and hold the Licensor harmless from and against all costs, liability and expense whatsoever (including, without limitation, attorneys' fees, court costs and expenses) arising out of or caused in any way by Licensee's failure to comply with the provisions of this paragraph.
- (b) In addition to other indemnity provisions in this Agreement, the Licensee shall indemnify and hold the Licensor harmless from and against all costs, liability and expense whatsoever (including, without limitation, attorneys' fees, court costs and expenses) caused by the negligence of the Licensee, its contractor, agents and/or employees, resulting in (1) any damage to or destruction of any telecommunications system on Licensor's property, and/or (2) any injury to or death of any person employed by or on behalf of any telecommunications company, and/or its contractor, agents and/or employees, on Licensor's property, except if such costs, liability or expenses are caused solely by the direct active negligence of the Licensor. Licensee further agrees that it shall not have or seek recourse against Licensor for any claim or cause of action for alleged loss of profits or revenue or loss of service or other consequential damage to a telecommunication company using Licensor's property or a customer or user of services of the fiber optic cable on Licensor's property.

Section 8. CLAIMS AND LIENS FOR LABOR AND MATERIAL; TAXES.

- (a) The Licensee shall fully pay for all materials joined or affixed to and labor performed upon property of the Licensor in connection with the construction, maintenance, repair, renewal, modification or reconstruction of the Pipeline, and shall not permit or suffer any mechanic's or materialman's lien of any kind or nature to be enforced against the property for any work done or materials furnished thereon at the instance or request or on behalf of the Licensee. The Licensee shall indemnify and hold harmless the Licensor against and from any and all liens, claims, demands, costs and expenses of whatsoever nature in any way connected with or growing out of such work done, labor performed, or materials furnished.
- (b) The Licensee shall promptly pay or discharge all taxes, charges and assessments levied upon, in respect to, or on account of the Pipeline, to prevent the same from becoming a charge or lien upon property of the Licensor, and so that the taxes, charges and assessments levied upon or in respect to such property shall not be increased because of the location, construction or maintenance of the Pipeline or any improvement, appliance or fixture connected therewith placed upon such property, or on account of the Licensee's interest therein. Where such tax, charge or assessment may not be separately made or assessed to the Licensee but shall be included in the assessment of the property of the Licensor, then the Licensee shall pay to the Licensor an equitable proportion of such taxes determined by the value of the Licensee's property upon property of the Licensor as compared

EXHIBIT B-1

Union Pacific Railroad Company Insurance Provisions For Pipeline / Wireline / Drainage License Agreements

Licensee shall, at its sole cost and expense, procure and maintain during the life of this Agreement the following insurance coverage:

A. **Commercial General Liability** insurance. This insurance shall contain broad form contractual liability with a single limit of at least \$2,000,000 each occurrence or claim and an aggregate limit of at least \$4,000,000. Coverage must be purchased on a post 1998 ISO or equivalent form, including but not limited to coverage for the following:

- Bodily injury including death and personal injury
- Property damage
- Fire legal liability (Not less than the replacement value of the portion of the premises occupied)
- Products and completed operations

The policy shall also contain the following endorsements which shall be indicated on the certificate of insurance:

- "For purposes of this insurance, Union Pacific Railroad payments related to the Federal Employers Liability Act or a Union Pacific Wage Continuation Program or similar programs are deemed not to be either payments made or obligations assumed under any Workers Compensation, disability benefits, or unemployment compensation law or similar law."
- The exclusions for railroads (except where the Job site is more than fifty feet (50') from any railroad including but not limited to tracks, bridges, trestles, roadbeds, terminals, underpasses or crossings), and explosion, collapse and underground hazard shall be removed.
- Coverage for Licensee's (and Lessor's) employees shall not be excluded
- Waiver of subrogation

B. **Business Automobile Coverage** insurance. This insurance shall contain a combined single limit of at least \$2,000,000 per occurrence or claim, including but not limited to coverage for the following:

- Bodily injury and property damage
- Any and all motor vehicles including owned, hired and non-owned

The policy shall also contain the following endorsements which shall be indicated on the certificate of insurance:

- "For purposes of this insurance, Union Pacific Railroad payments related to the Federal Employers Liability Act or a Union Pacific Wage Continuation Program or similar programs are deemed not to be either payments made or obligations assumed under any Workers Compensation, disability benefits, or unemployment compensation law or similar law."
- The exclusions for railroads (except where the Job site is more than fifty feet (50') from any railroad including but not limited to tracks, bridges, trestles, roadbeds, terminals, underpasses or crossings), and explosion, collapse and underground hazard shall be removed.
- Motor Carrier Act Endorsement- Hazardous materials clean up (MCS-90) if required by law.

C. **Workers Compensation and Employers Liability** insurance including but not limited to:

- Licensee's statutory liability under the workers' compensation laws of the state(s) affected by this Agreement
- Employers' Liability (Part B) with limits of at least
 - \$500,000 each accident, \$500,000 disease policy limit
 - \$500,000 each employee

If Workers Compensation insurance will not cover the liability of Licensee in states that require participation in state workers' compensation fund, Licensee shall comply with the laws of such states. If Licensee is self-insured, evidence of state approval must be provided along with evidence of excess workers compensation coverage. Coverage shall include liability arising out of the U. S. Longshoremen's and Harbor Workers' Act, the Jones Act, and the Outer Continental Shelf Land Act, if applicable.

The policy shall also contain the following endorsement which shall be indicated on the certificate of insurance:

- Alternate Employer Endorsement

D. **Umbrella or Excess Policies** In the event Licensee utilizes Umbrella or excess policies, these policies shall "follow form" and afford no less coverage than the primary policy.

Other Requirements

- E. Punitive damage exclusion must be deleted, which deletion shall be indicated on the certificate of insurance.
- F. Licensee agrees to waive its right of recovery, and its insurers, through policy endorsement, agree to waive their right of subrogation against Lessor. Licensee further waives its right of recovery, and its insurers also waive their right of subrogation against Lessor for loss of its owned or leased property or property under its care, custody and control. Licensee's insurance shall be primary with respect to any insurance carried by Lessor. All waivers of subrogation shall be indicated on the certificate of insurance.
- G. All policy(ies) required above (excluding Workers Compensation) shall provide severability of interests and shall name Lessor as an additional insured. Severability of interest and naming Lessor as additional insured shall be indicated on the certificate of insurance.
- H. Prior to commencing the Work, Licensee shall furnish to Lessor original certificate(s) of insurance evidencing the required coverage, endorsements, and amendments. The certificate(s) shall contain a provision that obligates the insurance company(ies) issuing such policy(ies) to notify Lessor in writing of any cancellation or material alteration. Upon request from Lessor, a certified duplicate original of any required policy shall be furnished.
- I. Any insurance policy shall be written by a reputable insurance company acceptable to Lessor or with a current Best's Insurance Guide Rating of A- and Class VII or better, and authorized to do business in the state(s) in which the service is to be provided.
- J. Licensee **WARRANTS** that this Agreement has been thoroughly reviewed by Licensee's insurance agent(s)/broker(s), who have been instructed by Licensee to procure the insurance coverage required by this Agreement and acknowledges that Licensee's insurance coverage will be primary.
- K. The fact that insurance is obtained by Licensee or Lessor on behalf of Licensee shall not be deemed to release or diminish the liability of Licensee, including, without limitation, liability under the indemnity provisions of this Agreement. Damages recoverable by Lessor shall not be limited by the amount of the required insurance coverage.

NEW

DOCUMENT



PL X 940206
Form Approved, AVP-Law

Folder No: 1973-91

PIPELINE CROSSING AGREEMENT

AUDIT 221580

Mile Post: 206.50, Fresno Subdivision
Location: Fresno, Fresno County, California

THIS AGREEMENT is made and entered into as of May 14, 2001, by and between **UNION PACIFIC RAILROAD COMPANY**, a Delaware corporation (hereinafter the "Licensor"), and **FRESNO METROPOLITAN FLOOD CONTROL DISTRICT (FMFCD)**, whose address is 5469 East Olive Avenue, Fresno, California 93727-2541 (hereinafter the "Licensee").

IT IS MUTUALLY AGREED BY AND BETWEEN THE PARTIES HERETO AS FOLLOWS:

Article I. LICENSE FEE

Upon execution of this Agreement, the Licensee shall pay to the Licensor a one-time license fee of **THREE THOUSAND FIVE HUNDRED DOLLARS (\$3,500.00)** and an administrative handling fee of **FIVE HUNDRED DOLLARS (\$500.00)**.

Article II. LICENSOR GRANTS RIGHT.

In consideration of the License Fee to be paid by the Licensee and in further consideration of the covenants and agreements herein contained to be by the Licensee kept, observed and performed, the Licensor hereby grants to the Licensee the right to construct and thereafter, during the term hereof, to maintain and operate only a

60-inch storm water pipeline crossing (hereinafter the "Pipeline")

in the location shown and in conformity with the dimensions and specifications indicated on the attached print dated March 22, 2001, marked Exhibit A. Under no circumstances shall Licensee modify the use of the Pipeline for a purpose other than the above-mentioned, and said Pipeline shall not be used for any other use, whether such use is currently technologically possible, or whether such use may come into existence during the life of this Agreement.

Article III. CONSTRUCTION, MAINTENANCE AND OPERATION.

The grant of right herein made to the Licensee is subject to each and all of the terms, provisions, conditions, limitations and covenants set forth herein and in Exhibit B, hereto attached.

Article IV. IF WORK IS TO BE PERFORMED BY CONTRACTOR.

If a contractor is to do any of the work performed on the Pipeline (including initial construction and subsequent relocation or substantial maintenance and repair work), then the Licensee shall require its contractor to execute the Railroad's form Contractor's Right of Entry Agreement. Licensee acknowledges receipt of a copy of the Contractor's Right of Entry Agreement and understanding of its terms, provisions, and requirements, and will inform its contractor of the need to execute the Agreement. Under no circumstances will Licensee's contractor be allowed onto Licensor's premises without first executing the Contractor's Right of Entry Agreement.

Article V. INSURANCE

- A. The Licensee, at its expense, shall obtain the insurance described in Exhibit B-1, hereto attached. The Licensee will also provide to the Licensor a Certificate of Insurance, identifying **Folder No. 1973-91**, issued by its insurance carrier confirming the existence of such insurance and that the policy or policies contain the following endorsement:

UNION PACIFIC RAILROAD COMPANY is named as an additional insured with respect to all liabilities arising out of the existence, use or any work performed on or associated with the 'Pipeline' located on Railroad right-of-way at Mile Post 206.50 on the Fresno Subdivision, at or near Fresno, Fresno County, California.

- B. If the Licensee named in this Agreement is a public entity subject to any applicable statutory tort laws, the limits of insurance described in Exhibit B-1 shall be the limits the Licensee then has in effect or which is required by applicable current or subsequent law, whichever is greater, a portion of which may be self-insured with the consent and approval of the Licensor

- C. All insurance correspondence shall be directed to:

Folder No. 1973-91
Union Pacific Railroad Company
Real Estate Department
1800 Farnam Street
Omaha, NE 68102

Article VI. TERM.

This Agreement shall take effect as of the date first herein written and shall continue in full force and effect until terminated as herein provided.

Article VII. AMENDMENT TO EXHIBIT B

Section 13(b) of Exhibit B, hereto attached, is deleted.

Article VIII. SPECIAL PROVISIONS

Shoring is required per drawing 106612, copy attached as Exhibit A-1. Shoring must be

designed, checked and stamped by a professional engineer licensed in the state of California. Shoring must be submitted for approval.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date first herein written.

UNION PACIFIC RAILROAD COMPANY

By: James C. Condit
Dire Manager Contracts

FRESNO METROPOLITAN FLOOD
CONTROL DISTRICT (FMFCD)

By Jerry L. Klemm
District Engineer

JUN-15-2001 FRI 11:48 AM FMFC

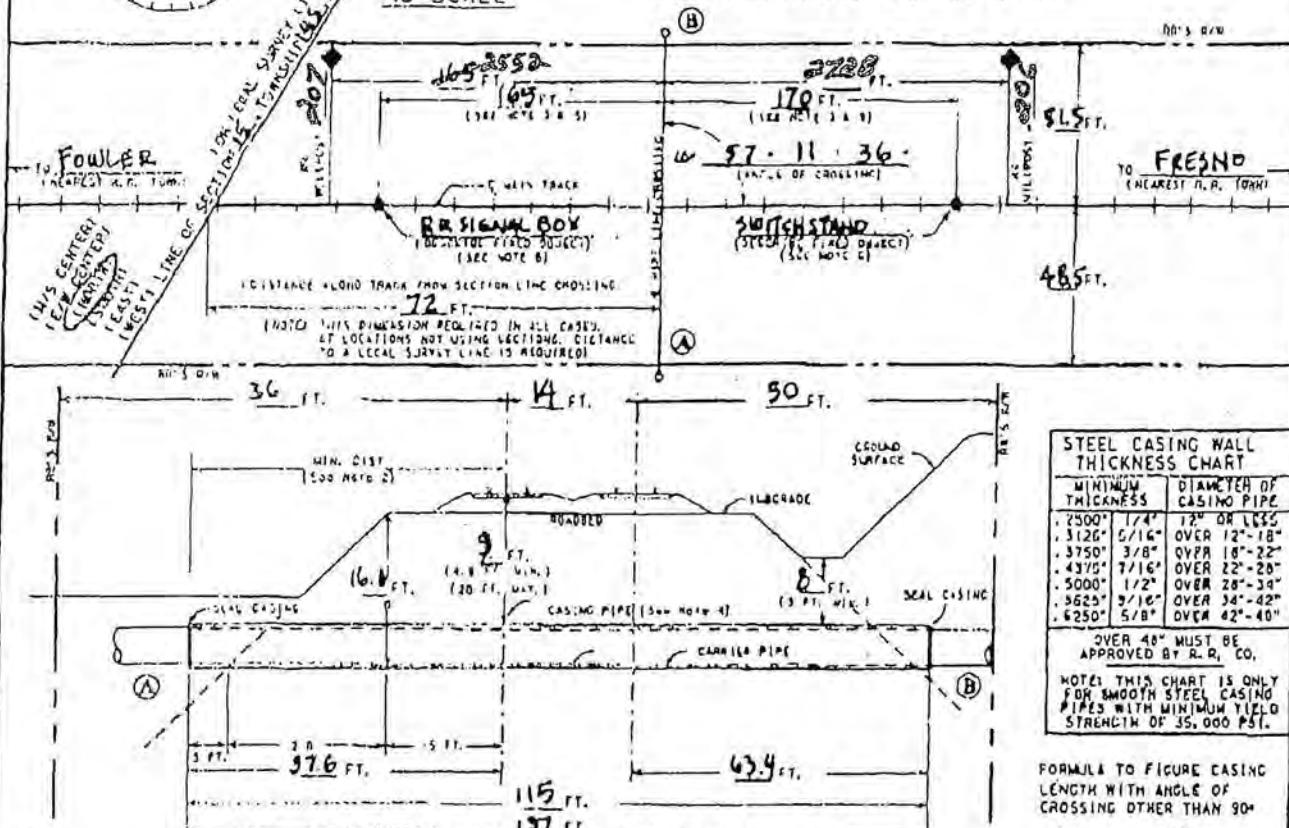
JUN-15-2001 00:56

BOYLE ENGINEERING

FAX NO. 5594562452

559 448 8233 P.02/02

P. 02

PLACE ARROW INDICATING NORTH
DIRECTION RELATIVE TO CROSSINGFORM DR-0404-B
REV. 5-15-98
WWW.UPRR.COMENCASED NON-FLAMMABLE
PIPELINE CROSSINGNOTE: ALL AVAILABLE DIMENSIONS MUST BE
FILLED IN TO PROCESS THIS APPLICATION.

NOTES: (SEEING LENGTH WHEN MEASURED ALONG PIPELINE.)

- (1) ALL HORIZONTAL DISTANCES TO BE MEASURED AT RIGHT ANGLES FROM E. OF TRACK.
- (2) CASING TO EXTEND BEYOND THE E. OF TRACK AT RIGHT ANGLES TWO FEET OF 20 = 20 FT., OR 30 FT., AND BEYOND LIMIT OF RAILROAD RIGHT-OF-WAY IF NECESSARY TO PROVIDE PROPER LENGTH OUTSIDE OF TRACK.
- (3) WIDTH OF 50' FROM THE END OF ANY RAILROAD BRIDGE, E. OF ANY CULVERT, OR FROM ANY SWITCHING AREA.
- (4) SIGNAL REPRESENTATIVE MUST BE PRESENT DURING INSTALLATION IF RAILROAD SIGNALS ARE IN THE VICINITY OF CROSSING.
- (5) ALLOWABLE FIXTURE OBJECTS INCLUDE: BACKWALLS OF BRIDGES; E. OF ROAD CROSSINGS & OVERHEAD VEHICULAR ROAD HANES; OR CULVERTS.
- (6) CASING AND CARRIER PIPE MUST BE PLACED A MINIMUM OF 2 FEET BELOW THE EXISTING FIBER OPTIC CABLE. ANY EXCAVATION REQUIRED WITHIN 4 FEET OF THE EXISTING FIBER OPTIC CABLE MUST BE HAND DUG.

- A) IS PIPELINE CROSSING WITHIN DEDICATED STREET? YES NO;
- B) IF YES, NAME OF STREET N/A OR TRANSMISSION LINE N/A
- C) CARRIER PIPE: COMMODITY TO BE CONVEYED STORM WATER
OPERATING PRESSURE 9 PSI
WALL THICKNESS 6 1/4" DIAMETER 60" MATERIAL RCP CLX
- E) CASING PIPE: WALL THICKNESS N/A DIAMETER N/A MATERIAL N/A; NOTE: CASING MUST HAVE 2" CLEARANCE BETWEEN GREATEST OUTSIDE DIAMETER OF CARRIER PIPE AND INTERIOR DIAMETER OF CASING PIPE. WHEN FURNISHING DIMENSIONS, GIVE OUTSIDE OF CARRIER PIPE AND INSIDE OF CASING PIPE.
- F) METHOD OF INSTALLING CASING PIPE UNDER TRACK(S):
— DAY BORE AND JACK (WET BORE NOT PERMITTED)
— TUNNEL; OTHER DIRECT JACK AND BORE
- G) WILL CONSTRUCTION BE BY AN OUTSIDE CONTRACTOR? YES NO;
H) DISTANCE FROM CENTER LINE OF TRACK TO NEAR FACE OF BORING AND JACKING PTS WHEN MEASURED AT RIGHT ANGLES TO TRACK 165 FT.
- I) APPLICANT HAS CONTACTED 1-800-336-9193, U.P. COMMUNICATION DEPARTMENT, AND HAS DETERMINED FIBER OPTIC CABLE DOES NOT EXIST IN VICINITY OF WORK TO BE PERFORMED. TICKET NO. NO 215011 / MARK ATHON

EXHIBIT "A"

(FOR RAILROAD USE ONLY)

UNION PACIFIC RAILROAD CO.
FRESNOMo P 206.50 E. S. 5981+95
ENCASED P/L CROSSING AT
FRESNO FRESNO CAFRESNO METROPOLITAN ROAD CONTROL DISTRICT
RR FILE NO. 1973-91 DATE 6/18/01

WARNING

IN ALL OCCASIONS, U.P. COMMUNICATIONS
DEPARTMENT MUST BE CONTACTED IN ADVANCE
OF ANY WORK TO DETERMINE EXISTENCE AND
LOCATION OF FIBER OPTIC CABLE.
PHONE #: 1-800-336-9193

TOTAL P.02

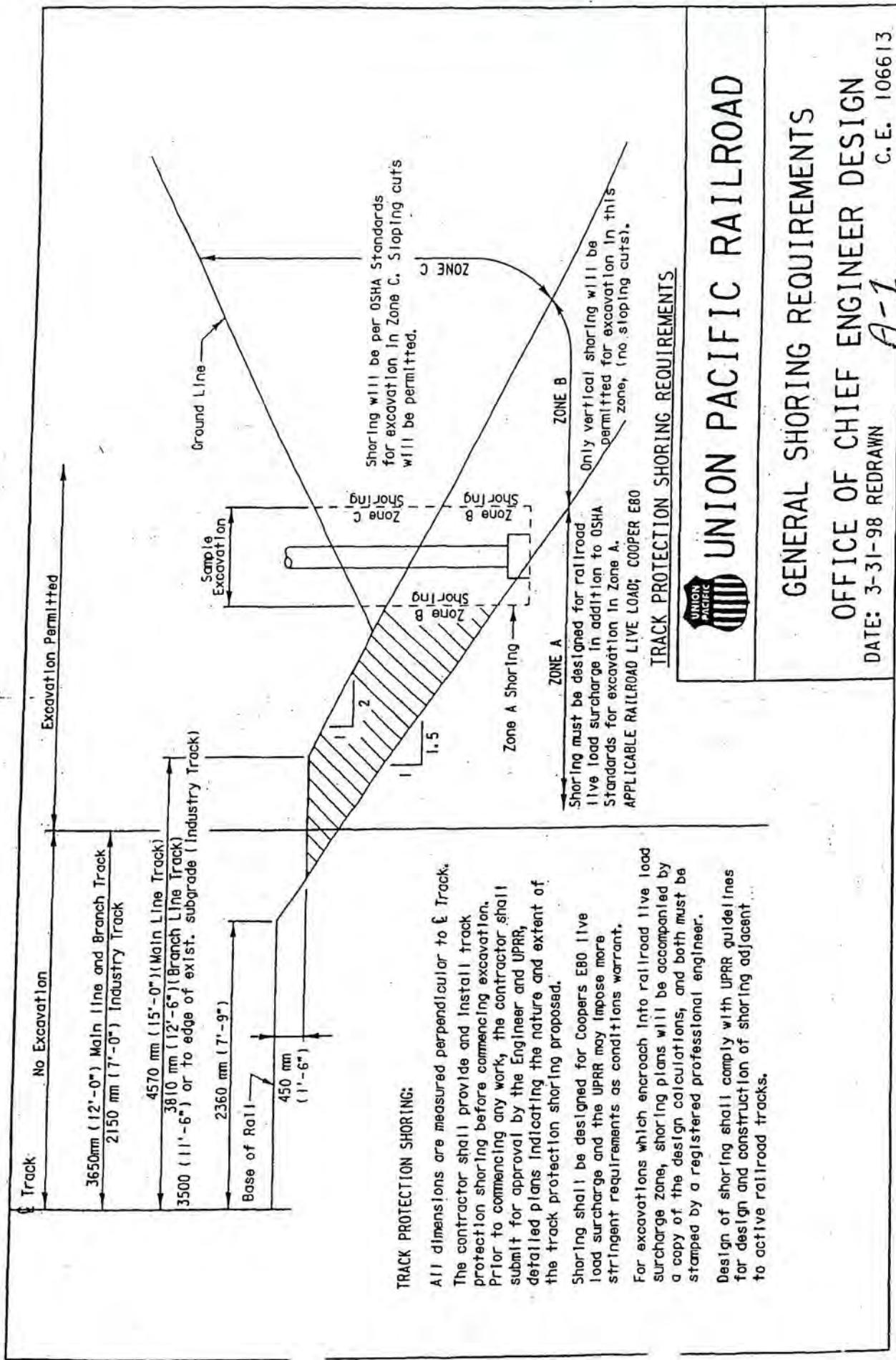


EXHIBIT B

Section 1. LIMITATION AND SUBORDINATION OF RIGHTS GRANTED.

(a) The foregoing grant of right is subject and subordinate to the prior and continuing right and obligation of the Licensor to use and maintain its entire property including the right and power of the Licensor to construct, maintain, repair, renew, use, operate, change, modify or relocate railroad tracks, signal, communication, fiber optics, or other wirelines, pipelines and other facilities upon, along or across any or all parts of its property, all or any of which may be freely done at any time or times by the Licensor without liability to the Licensee or to any other party for compensation or damages.

(b) The foregoing grant is also subject to all outstanding superior rights (including those in favor of licensees and lessees of the Licensor's property, and others) and the right of the Licensor to renew and extend the same, and is made without covenant of title or for quiet enjoyment.

Section 2. CONSTRUCTION, MAINTENANCE AND OPERATION.

(a) The Pipeline shall be constructed, operated, maintained, repaired, renewed, modified and/or reconstructed by the Licensee in strict conformity with Union Pacific Railroad Co. Common Standard Specification I029 adopted November 1949, and all amendments thereof and supplements thereto, which by this reference is hereby made a part hereof, except as may be modified and approved by the Licensor's Vice President-Engineering Services. In the event such Specification conflicts in any respect with the requirements of any federal, state or municipal law or regulation, such requirements shall govern on all points of conflict, but in all other respects the Specification shall apply.

(b) All work performed on property of the Licensor in connection with the construction, maintenance, repair, renewal, modification or reconstruction of the Pipeline shall be done to the satisfaction of the Licensor.

(c) Prior to the commencement of any work in connection with the construction, maintenance, repair, renewal, modification, relocation, reconstruction or removal of the Pipeline where it passes underneath the roadbed and track or tracks of the Licensor, the Licensee shall submit to the Licensor plans setting out the method and manner of handling the work, including the shoring and cribbing, if any, required to protect the Licensor's operations, and shall not proceed with the work until such plans have been approved by the Vice President-Engineering Services of the Licensor and then the work shall be done to the satisfaction of the Vice President-Engineering Services or his authorized representative. The Licensor shall have the right, if it so elects, to provide such support as it may deem necessary for the safety of its track or tracks during the time of construction, maintenance, repair, renewal, modification, relocation, reconstruction or removal of the Pipeline, and, in the event the Licensor provides such support, the Licensee shall pay to the Licensor, within fifteen (15) days after bills shall have been rendered therefor, all expense incurred by the Licensor in connection therewith, which expense shall include all assignable costs.

(d) The Licensee shall keep and maintain the soil over the Pipeline thoroughly compacted and the grade even with the adjacent surface of the ground.

Section 3. NOTICE OF COMMENCEMENT OF WORK.

If an emergency should arise requiring immediate attention, the Licensee shall provide as much notice as practicable to Licensor before commencing any work. In all other situations, the Licensee shall notify the Licensor at least ten (10) days (or such other time as the Licensor may allow) in advance of the commencement of any work upon property of the Licensor in connection with the construction, maintenance, repair, renewal, modification, reconstruction, relocation or removal of the Pipeline. All such work shall be prosecuted diligently to completion.

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The Licensee shall bear the entire cost and expense incurred in connection with the construction, maintenance, repair and renewal and any and all modification, revision, relocation, removal or reconstruction of the Pipeline, including any and all expense which may be incurred by the Licensor in connection therewith for supervision, inspection, flagging, or otherwise.

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(a) The license herein granted is subject to the needs and requirements of the Licensor in the operation of its railroad and in the improvement and use of its property, and the Licensee shall, at the sole expense of the Licensee, reinforce the Pipeline, or move all or any portion of the Pipeline to such new location as the Licensor may designate, whenever, in the furtherance of its needs and requirements, the Licensor shall find such action necessary or desirable.

(b) All the terms, conditions and stipulations herein expressed with reference to the Pipeline on property of the Licensor in the location hereinbefore described shall, so far as the Pipeline remains on the property, apply to the Pipeline as modified, changed or relocated within the contemplation of this section.

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The Pipeline and all parts thereof within and outside of the limits of the property of the Licensor shall be constructed and, at all times, maintained, repaired, renewed and operated in such manner as to cause no interference whatsoever with the constant, continuous and uninterrupted use of the tracks, property and facilities of the Licensor, and nothing shall be done or suffered to be done by the Licensee at any time that would in any manner impair the safety thereof.

Section 7. PROTECTION OF FIBER OPTIC CABLE SYSTEMS.

(a) Fiber optic cable systems may be buried on the Licensor's property. Protection of the fiber optic cable systems is of extreme importance since any break could disrupt service to users resulting in business interruption and loss of revenue and profits. Licensee shall telephone the Licensor at 1-800-336-9193 (a 24-hour number) to determine if fiber optic cable is buried anywhere on the Licensor's premises to be used by the Licensee. If it is, Licensee will telephone the telecommunications company(ies) involved, arrange for a cable locator, make arrangements for relocation or other protection of the fiber optic cable, all at Licensee's expense, and will commence no work on the right of way until all such protection or relocation has been accomplished. Licensee shall indemnify and hold the Licensor harmless from and against all costs, liability and expense whatsoever (including, without limitation, attorneys' fees, court costs and expenses) arising out of or caused in any way by Licensee's failure to comply with the provisions of this paragraph.

(b) In addition to other indemnity provisions in this Agreement, the Licensee shall indemnify and hold the Licensor harmless from and against all costs, liability and expense whatsoever (including, without limitation, attorneys' fees, court costs and expenses) caused by the negligence of the Licensee, its contractor, agents and/or employees, resulting in (1) any damage to or destruction of any telecommunications system on Licensor's property, and/or (2) any injury to or death of any person employed by or on behalf of any telecommunications company, and/or its contractor, agents and/or employees, on Licensor's property, except if such costs, liability or expenses are caused solely by the direct active negligence of the Licensor. Licensee further agrees that it shall not have or seek recourse against Licensor for any claim or cause of action for alleged loss of profits or revenue or loss of service or other consequential damage to a telecommunication company using Licensor's property or a customer or user of services of the fiber optic cable on Licensor's property.

Section 8. CLAIMS AND LIENS FOR LABOR AND MATERIAL; TAXES.

(a) The Licensee shall fully pay for all materials joined or affixed to and labor performed upon property of the Licensor in connection with the construction, maintenance, repair, renewal, modification or reconstruction of the Pipeline, and shall not permit or suffer any mechanic's or materialman's lien of any kind or nature to be enforced against the property for any work done or materials furnished thereon at the instance or request or on behalf of the Licensee. The Licensee shall indemnify and hold harmless the Licensor against and from any and all liens, claims, demands, costs and expenses of whatsoever nature in any way connected with or growing out of such work done, labor performed, or materials furnished.

(b) The Licensee shall promptly pay or discharge all taxes, charges and assessments levied upon, in respect to, or on account of the Pipeline, to prevent the same from becoming a charge or lien upon property of the Licensor, and so that the taxes, charges and assessments levied upon or in respect to such property shall not be increased because of the location, construction or maintenance of the Pipeline or any improvement, appliance or fixture connected therewith placed upon such property, or on account of the Licensee's interest therein. Where such tax, charge or assessment may not be separately made or assessed to the Licensee but shall be included in the assessment of the property of the Licensor, then the Licensee shall pay to the Licensor an equitable proportion of such taxes determined by the value of the Licensee's property upon property of the Licensor as compared

with the entire value of such property.

Section 9. RESTORATION OF LICENSOR'S PROPERTY.

In the event the Licensor authorizes the Licensee to take down any fence of the Licensor or in any manner move or disturb any of the other property of the Licensor in connection with the construction, maintenance, repair, renewal, modification, reconstruction, relocation or removal of the Pipeline, then in that event the Licensee shall, as soon as possible and at Licensee's sole expense, restore such fence and other property to the same condition as the same were in before such fence was taken down or such other property was moved or disturbed, and the Licensee shall indemnify and hold harmless the Licensor, its officers, agents and employees, against and from any and all liability, loss, damages, claims, demands, costs and expenses of whatsoever nature, including court costs and attorneys' fees, which may result from injury to or death of persons whomsoever, or damage to or loss or destruction of property whatsoever, when such injury, death, damage, loss or destruction grows out of or arises from the taking down of any fence or the moving or disturbance of any other property of the Licensor.

Section 10. INDEMNITY.

(a) As used in this Section, "Licensor" includes other railroad companies using the Licensor's property at or near the location of the Licensee's installation and their officers, agents, and employees; "Loss" includes loss, damage, claims, demands, actions, causes of action, penalties, costs, and expenses of whatsoever nature, including court costs and attorneys' fees, which may result from: (a) injury to or death of persons whomsoever (including the Licensor's officers, agents, and employees, the Licensee's officers, agents, and employees, as well as any other person); and/or (b) damage to or loss or destruction of property whatsoever (including Licensee's property, damage to the roadbed, tracks, equipment, or other property of the Licensor, or property in its care or custody).

(b) As a major inducement and in consideration of the license and permission herein granted, the Licensee agrees to indemnify and hold harmless the Licensor from any Loss which is due to or arises from:

1. The prosecution of any work contemplated by this Agreement including the installation, construction, maintenance, repair, renewal, modification, reconstruction, relocation, or removal of the Pipeline or any part thereof; or
2. The presence, operation, or use of the Pipeline or contents escaping therefrom,

except to the extent that the Loss is caused by the sole and direct negligence of the Licensor.

Section 11. REMOVAL OF PIPE LINE UPON TERMINATION OF AGREEMENT.

Prior to the termination of this Agreement howsoever, the Licensee shall, at Licensee's sole expense, remove the Pipeline from those portions of the property not occupied by the roadbed and track or tracks of the Licensor and shall restore, to the satisfaction of the Licensor, such portions of such property to as good a condition as they were in at the time of the construction of the Pipeline. If the Licensee fails to do the foregoing, the Licensor may do such work of removal and restoration at the cost and expense of the Licensee. The Licensor may, at its option, upon such termination, at the entire cost and expense of the Licensee, remove the portions of the Pipeline located underneath its roadbed and track or tracks and restore such roadbed to as good a condition as it was in at the time of the construction of the Pipeline, or it may permit the Licensee to do such work of removal and restoration to the satisfaction of the Licensor. In the event of the removal by the Licensor of the property of the Licensee and of the restoration of the roadbed and property as herein provided, the Licensor shall in no manner be liable to the Licensee for any damage sustained by the Licensee for or on account thereof, and such removal and restoration shall in no manner prejudice or impair any right of action for damages, or otherwise, that the Licensor may have against the Licensee.

Section 12. WAIVER OF BREACH.

The waiver by the Licensor of the breach of any condition, covenant or agreement herein contained to be kept, observed and performed by the Licensee shall in no way impair the right of the Licensor to avail itself of any remedy for any subsequent breach thereof.

Section 13. TERMINATION.

(a) If the Licensee does not use the right herein granted or the Pipeline for one (1) year, or if the Licensee continues in default in the performance of any covenant or agreement herein contained for a period of thirty (30) days after written notice from the Lessor to the Licensee specifying such default, the Lessor may, at its option, forthwith immediately terminate this Agreement by written notice.

SEE ARTICLE

VII

(b) In addition to the provisions of subparagraph (a) above, this Agreement may be terminated by written notice given by either party hereto to the other on any date in such notice stated, not less, however, than thirty (30) days subsequent to the date upon which such notice shall be given.

(c) Notice of default and notice of termination may be served personally upon the Licensee or by mailing to the last known address of the Licensee. Termination of this Agreement for any reason shall not affect any of the rights or obligations of the parties hereto which may have accrued, or liabilities, accrued or otherwise, which may have arisen prior thereto.

Section 14. AGREEMENT NOT TO BE ASSIGNED.

The Licensee shall not assign this Agreement, in whole or in part, or any rights herein granted, without the written consent of the Lessor, and it is agreed that any transfer or assignment or attempted transfer or assignment of this Agreement or any of the rights herein granted, whether voluntary, by operation of law, or otherwise, without such consent in writing, shall be absolutely void and, at the option of the Lessor, shall terminate this Agreement.

Section 15. SUCCESSORS AND ASSIGNS.

Subject to the provisions of Section 14 hereof, this Agreement shall be binding upon and inure to the benefit of the parties hereto, their heirs, executors, administrators, successors and assigns.

EXHIBIT B-1

Union Pacific Railroad Company Insurance Provisions For Pipeline / Wireline / Drainage License Agreements

Licensee shall, at its sole cost and expense, procure and maintain during the life of this Agreement the following insurance coverage:

A. **Commercial General Liability** insurance. This insurance shall contain broad form contractual liability with a single limit of at least \$2,000,000 each occurrence or claim and an aggregate limit of at least \$4,000,000. Coverage must be purchased on a post 1998 ISO or equivalent form, including but not limited to coverage for the following:

- Bodily injury including death and personal injury
- Property damage
- Fire legal liability (Not less than the replacement value of the portion of the premises occupied)
- Products and completed operations

The policy shall also contain the following endorsements which shall be indicated on the certificate of insurance:

- "For purposes of this insurance, Union Pacific Railroad payments related to the Federal Employers Liability Act or a Union Pacific Wage Continuation Program or similar programs are deemed not to be either payments made or obligations assumed under any Workers Compensation, disability benefits, or unemployment compensation law or similar law."
- The exclusions for railroads (except where the Job site is more than fifty feet (50') from any railroad including but not limited to tracks, bridges, trestles, roadbeds, terminals, underpasses or crossings), and explosion, collapse and underground hazard shall be removed.
- Coverage for Licensee's (and Lessor's) employees shall not be excluded
- Waiver of subrogation

B. **Business Automobile Coverage** insurance. This insurance shall contain a combined single limit of at least \$2,000,000 per occurrence or claim, including but not limited to coverage for the following:

- Bodily injury and property damage
- Any and all motor vehicles including owned, hired and non-owned

The policy shall also contain the following endorsements which shall be indicated on the certificate of insurance:

- "For purposes of this insurance, Union Pacific Railroad payments related to the Federal Employers Liability Act or a Union Pacific Wage Continuation Program or similar programs are deemed not to be either payments made or obligations assumed under any Workers Compensation, disability benefits, or unemployment compensation law or similar law."
- The exclusions for railroads (except where the Job site is more than fifty feet (50') from any railroad including but not limited to tracks, bridges, trestles, roadbeds, terminals, underpasses or crossings), and explosion, collapse and underground hazard shall be removed.
- Motor Carrier Act Endorsement- Hazardous materials clean up (MCS-90) if required by law.

C. **Workers Compensation and Employers Liability** insurance including but not limited to:

- Licensee's statutory liability under the workers' compensation laws of the state(s) affected by this Agreement
- Employers' Liability (Part B) with limits of at least
 - \$500,000 each accident, \$500,000 disease policy limit
 - \$500,000 each employee

If Workers Compensation insurance will not cover the liability of Licensee in states that require participation in state workers' compensation fund, Licensee shall comply with the laws of such states. If Licensee is self-insured, evidence of state approval must be provided along with evidence of excess workers compensation coverage. Coverage shall include liability arising out of the U. S. Longshoremen's and Harbor Workers' Act, the Jones Act, and the Outer Continental Shelf Land Act, if applicable.

The policy shall also contain the following endorsement which shall be indicated on the certificate of insurance:

- Alternate Employer Endorsement

D. **Umbrella or Excess Policies** In the event Licensee utilizes Umbrella or excess policies, these policies shall "follow form" and afford no less coverage than the primary policy.

Other Requirements

- E. Punitive damage exclusion must be deleted, which deletion shall be indicated on the certificate of insurance.
- F. Licensee agrees to waive its right of recovery, and its insurers, through policy endorsement, agree to waive their right of subrogation against Licensor. Licensee further waives its right of recovery, and its insurers also waive their right of subrogation against Licensor for loss of its owned or leased property or property under its care, custody and control. Licensee's insurance shall be primary with respect to any insurance carried by Licensor. All waivers of subrogation shall be indicated on the certificate of insurance.
- G. All policy(ies) required above (excluding Workers Compensation) shall provide severability of interests and shall name Licensor as an additional insured. Severability of interest and naming Licensor as additional insured shall be indicated on the certificate of insurance.
- H. Prior to commencing the Work, Licensee shall furnish to Licensor original certificate(s) of insurance evidencing the required coverage, endorsements, and amendments. The certificate(s) shall contain a provision that obligates the insurance company(ies) issuing such policy(ies) to notify Licensor in writing of any cancellation or material alteration. Upon request from Licensor, a certified duplicate original of any required policy shall be furnished.
- I. Any insurance policy shall be written by a reputable insurance company acceptable to Licensor or with a current Best's Insurance Guide Rating of A- and Class VII or better, and authorized to do business in the state(s) in which the service is to be provided.
- J. Licensee **WARRANTS** that this Agreement has been thoroughly reviewed by Licensee's insurance agent(s)/broker(s), who have been instructed by Licensee to procure the insurance coverage required by this Agreement and acknowledges that Licensee's insurance coverage will be primary.
- K. The fact that insurance is obtained by Licensee or Licensor on behalf of Licensee shall not be deemed to release or diminish the liability of Licensee, including, without limitation, liability under the indemnity provisions of this Agreement. Damages recoverable by Licensor shall not be limited by the amount of the required insurance coverage.

NEW

DOCUMENT

RFP No.: HSR 11-16
CONTRACT PACKAGE 1B
North of Stanislaus St to South of Santa Clara St

ATTACHMENT No. 2, PAGE 1 OF 2

Drawing NO. UT-C4054

15) 84-inch diameter Storm Drain (approx. Sta. S10972+50) located in existing Southern Pacific Transportation Company easement COPY H1 and H2 attached (RAF-VI-27325/314, august 26, 1970) and easement Doc NO. 85128081

16) 36-inch diameter Storm Drain (approx. Sta. S10977+50) located in existing Street Right of Way (Stanislaus St)

Drawing NO. UT-C4055

17) 36-inch diameter Storm Drain (approx. Sta. S10987+00) located in existing Street Right of Way (Merced St)

ATTACHMENT No. 2, PAGE 2 OF 2

Drawing NO. UT-C4056

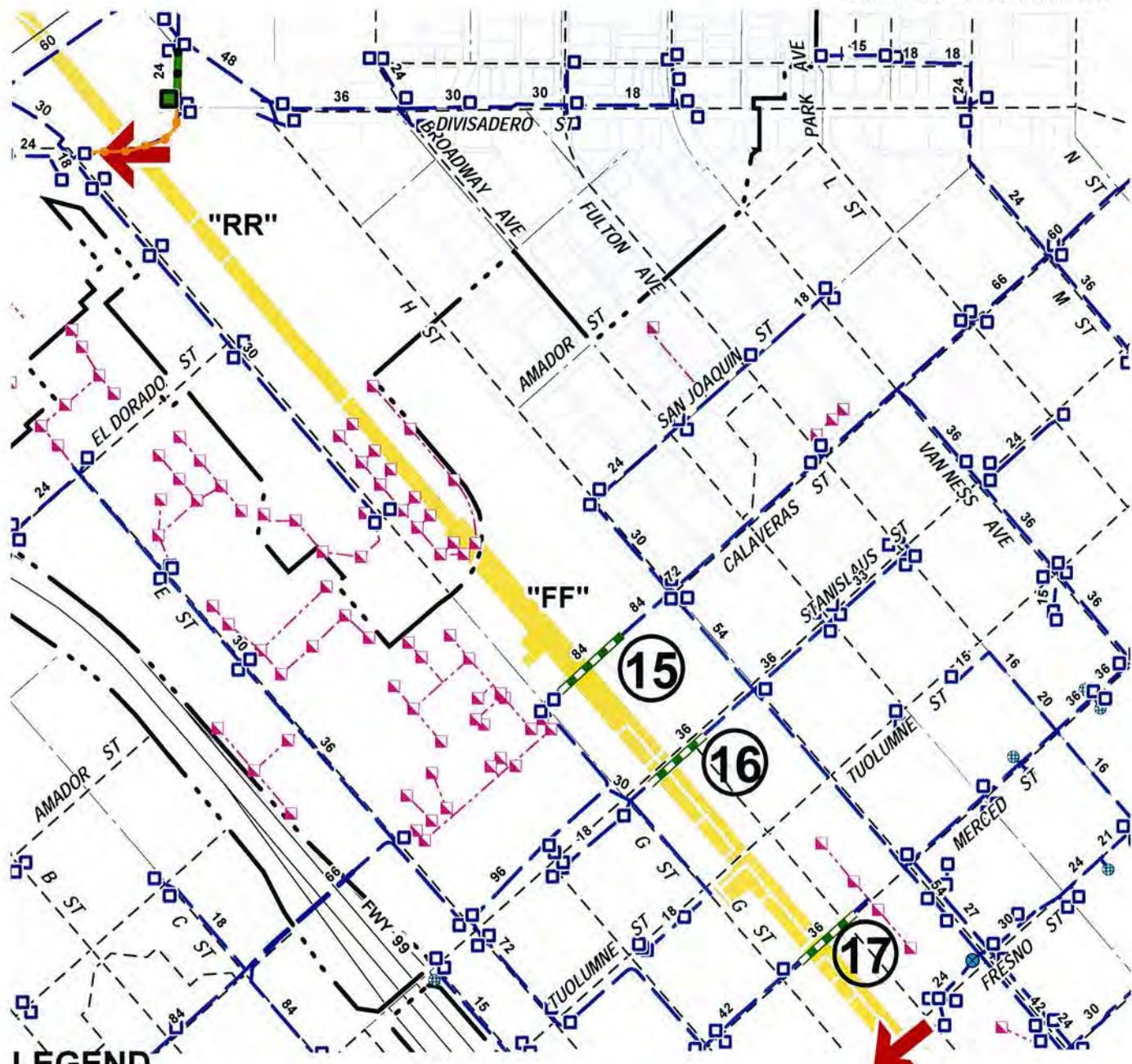
18) 72-inch diameter Storm Drain (approx. Sta. S11006+50) located in existing Street Right of Way (Kern St) and in existing Southern Pacific Transportation Company easement COPY I (Deed Audit Number 70220)

19) 36-inch diameter Storm Drain (approx. Sta. S11011+00) located in existing easement COPY J attached (Doc No. 2004-086900)

Drawing NO. UT-C4057

20) 18-inch diameter Storm Drain (approx. Sta. S11021+00) located in existing Street Right of Way (Ventura St)

NOTE:
THIS MAP IS SCHEMATIC
DISTANCES ARE APPROXIMATE.



LEGEND

■ Master Plan Facilities To Be Constructed By High Speed Train
-Pipeline (Size Shown) & Inlet.

■ Existing Facilities To Be Protected Or Relocated

□ Existing Master Plan Facilities

- - - Inlet Boundary

- - - Drainage Area Boundary

— Facilities To Be Removed

■ Private Facilities

■ High Speed Train Right Of Way

↑ Major Storm Flow Path



1 " = 600'

HIGH SPEED TRAIN DRAINAGE AREAS "RR" & "FF"

ATTACHMENT No. 2
PAGE 1 OF 2



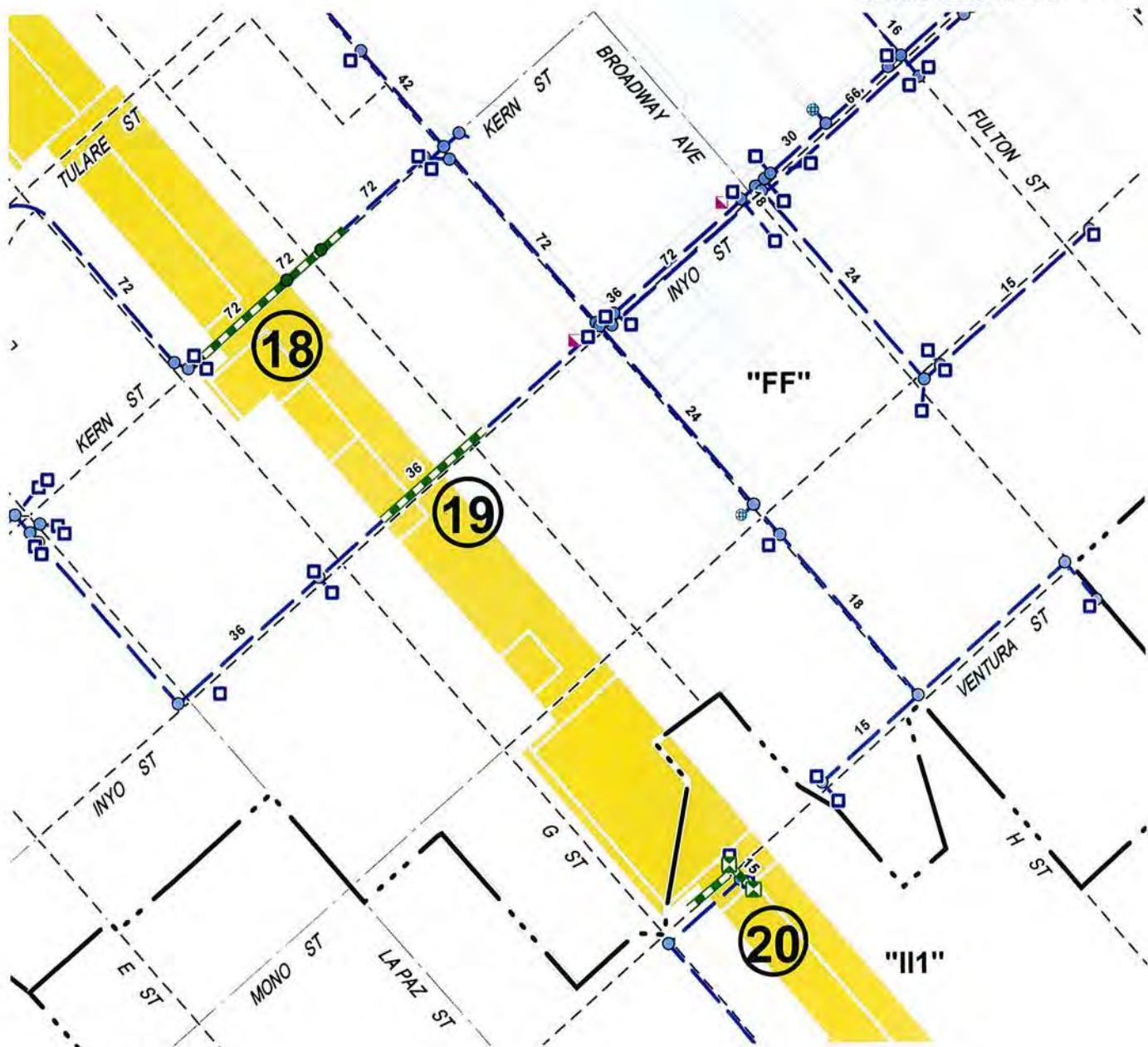
FRESNO METROPOLITAN FLOOD CONTROL DISTRICT

Prepared by: wadet

Date: 4/26/2012

Path: K:\Autocad\DWGS\0EXHIBIT\HighSpeedRail\Attachment 1-312-1.mxd

NOTE:
THIS MAP IS SCHEMATIC
DISTANCES ARE APPROXIMATE.



LEGEND

- Existing Facilities To Be Protected Or Relocated
- Existing Master Plan Facilities
- Inlet Boundary
- Drainage Area Boundary
- Private Facilities
- High Speed Train Right Of Way



1 " = 300'

HIGH SPEED TRAIN
DRAINAGE AREA "FF" & "II1"

ATTACHMENT No. 2
PAGE 2 OF 2



FRESNO METROPOLITAN FLOOD CONTROL DISTRICT

Prepared by: wadet

Date: 4/26/2012

Path: K:\Autocad\DWGS\0\EXHIBIT\HighSpeedRail\Attachment 1-3\2-2.mxd

NEW

DOCUMENT

(H)

THIS INDENTURE, made this 26th day of August, 1970, by and between SOUTHERN PACIFIC TRANSPORTATION COMPANY, a corporation of the State of Delaware, herein termed "Railroad", and FRESNO METROPOLITAN FLOOD CONTROL DISTRICT, a public corporation of the State of California, herein termed "Grantee";

Recorded
10-15-70
Fresno Co.
Book 5318
Page 830
D/C # 7303

WITNESSETH:

1. Railroad hereby grants to Grantee, subject to the reservations, covenants and conditions herein contained, an easement and right of way for the construction, reconstruction, maintenance and operation of an eighty-four inch (84") storm drain, hereinafter termed "structure", in, upon, along, across and beneath the property of Railroad at or near Fresno, in the County of Fresno, State of California, at Engineer Station 5903+32, Mile Post 205, in the location indicated in blue on the attached print of Railroad's San Joaquin Division Drawing A-9928, revised July 28, 1969.

Original loc.
C-20

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2. In the event Railroad shall at any time so require, Grantee, at Grantee's expense, shall reconstruct, alter or otherwise improve said structure upon receipt of written notice from Railroad so to do; provided, however, that this provision shall not be applicable if said structure has been constructed to accommodate railroad trackage across the full width of Railroad's operating right of way.

3. This grant is subject and subordinate to the prior and continuing right of Railroad, its successors and assigns, to use all the property described herein in the performance of its duty as a common carrier and, for that purpose, there is reserved to Railroad, its successors and assigns, the right (consistent with the rights herein granted) to construct, reconstruct, maintain and use existing and future railroad tracks, facilities and appurtenances and existing and future transportation, communication and pipeline facilities and appurtenances in, upon, over, under, across and along said property.

4. This grant is subject to all licenses, leases, easements, restrictions, conditions, covenants, encumbrances, liens and claims of title which may affect said property, and the word "grant" as used herein shall not be construed as a covenant against the existence of any thereof.

5. ~~xx
xx
xx
xx~~

6. Grantee shall bear the entire cost and expense of constructing, reconstructing and maintaining said structure upon said property. Grantee agrees that all work upon or in connection with said structure shall be done at such times and in such manner as not to interfere in any way whatsoever with the operations of Railroad. The plans for and the construction or reconstruction of said structure shall be subject to the approval of Railroad. Grantee agrees to give Railroad five (5) days' written notice prior to commencement of any work of construction or reconstruction.

Grantee agrees to reimburse Railroad for the cost and expense to Railroad of furnishing any materials or performing any labor in connection with the construction, reconstruction, maintenance and removal of said structure, including, but not limited to, the installation and removal of such falsework and other protection beneath or along Railroad's tracks, and the furnishing of such watchmen, flagmen and inspectors as Railroad deems necessary.

7. Grantee, its agents and employees, shall have the privilege of entry on said property for the purpose of constructing, reconstructing, maintaining and making necessary repairs to said structure. Grantee agrees to keep said property and said structure in good and safe condition, free from waste, so far as affected by Grantee's operations, to the satisfaction of Railroad, failing which Railroad may perform the necessary work at the expense of Grantee, which expense Grantee agrees to pay to Railroad upon demand.

8. In the event any work upon or in connection with said structure or its appurtenances, to be done upon or adjacent to the tracks and property of Railroad, should be let to a contractor by Grantee, such work shall not be begun until such

contractor shall have first entered into an agreement with Railroad indemnifying Railroad against all claims, liability, cost and expense growing out of the work to be done by such contractor.

Such contractor shall furnish a surety bond, in amount and form satisfactory to Railroad, guaranteeing the faithful performance of all the terms, covenants and conditions contained in said agreement, and a certified copy of an insurance policy in form and amounts satisfactory to Railroad covering the contractual liability assumed by contractor in said agreement.

9. Grantee shall assume all risk of damage to said structure and appurtenances, and other property of Grantee, or in custody of Grantee, while upon or near the property of Railroad, caused by or contributed to in any way by the construction, operation, maintenance or presence of Railroad's line of railroad at the above-mentioned location; provided, however, that Railroad shall assume responsibility for damage to said structures or appurtenances caused solely by the negligent construction or reconstruction of railroad facilities at this location.

10. Should Grantee, its successors and assigns, at any time abandon the use of said property or any part thereof, or fail at any time to use the same for the purpose contemplated herein for a continuous period of one (1) year, the right hereby given shall cease to the extent of the use so abandoned or discontinued, and Railroad shall at once have the right, in addition to but not in qualification of the rights hereinabove reserved, to resume exclusive possession of said property, or the part thereof the use of which is so discontinued or abandoned.

Upon termination of the rights and privileges hereby granted, Grantee, at its own cost and expense, agrees to remove said structure from said property and restore said property as nearly as practicable to the same state and condition in which it existed prior to the construction of said structure. Should Grantee in such event fail, neglect or refuse to remove said structure and restore said property, such removal and restoration may be performed by Railroad at the expense of Grantee, which expense Grantee agrees to pay to Railroad upon demand.

11. This indenture shall inure to the benefit of and be binding upon the successors and assigns of the parties hereto.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed in duplicate the day and year first herein written.

SOUTHERN PACIFIC TRANSPORTATION COMPANY

By H. M. Faris
(Title)

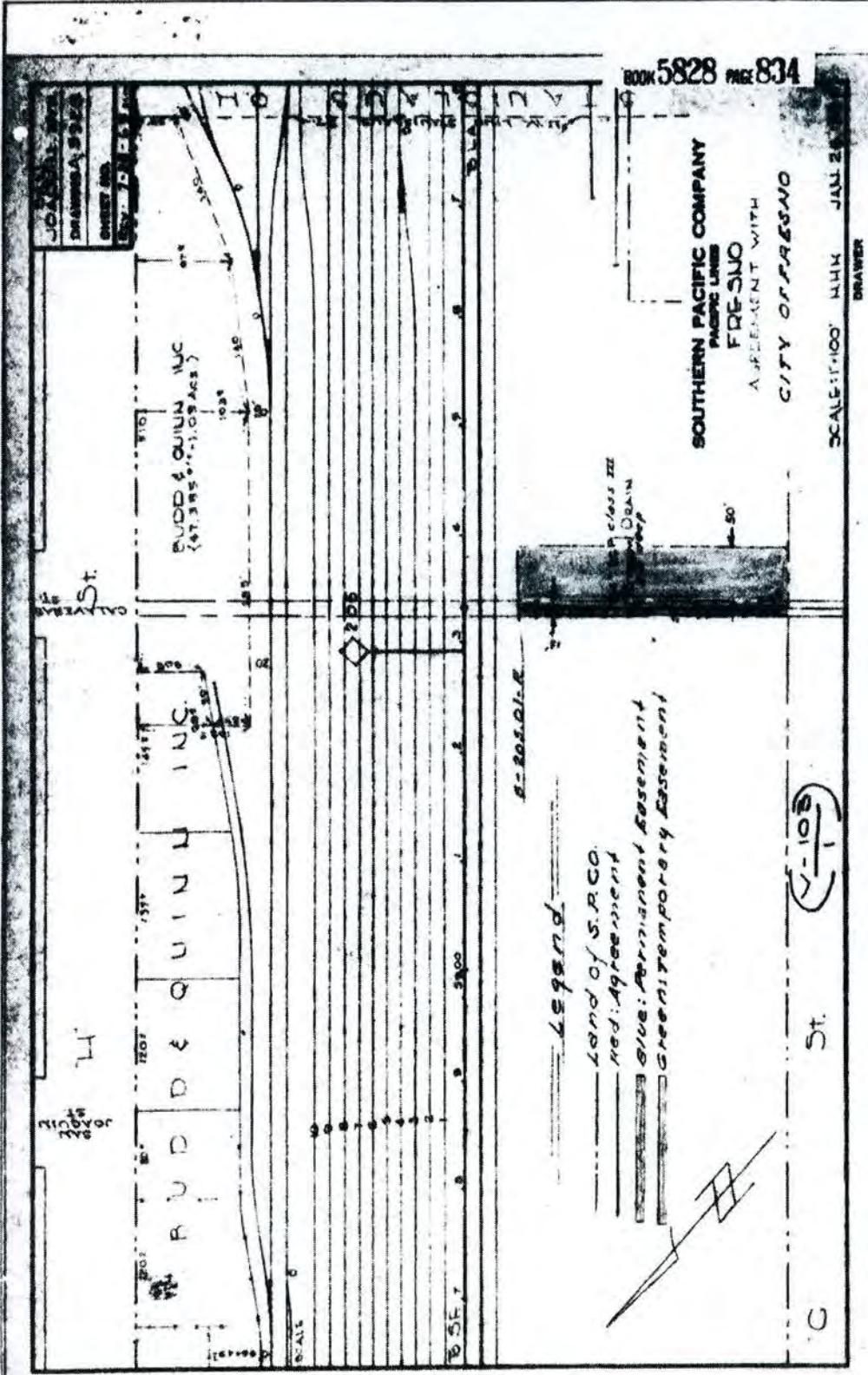
Attest: P. W. Thompson
Assistant Secretary

PRESNO METROPOLITAN FLOOD
CONTROL DISTRICT

By Frank J. Beck
(Title) Manager

Attest: Bernardine Thomas
Secretary

FRESNO COUNTY RECORDERS OFFICE



NEW

DOCUMENT

Recording requested by
Fresno Metropolitan Flood
Control District and
when recorded mail to:
FRESNO METROPOLITAN FLOOD
CONTROL DISTRICT
300 Rowell Building
Fresno, CA 93721

NO FEES REQUIRED

85128081

H2

RECORDED IN OFFICIAL RECORDS OF
FRESNO COUNTY, CALIFORNIA,
AT 15 MIN. PAST 3 PM
DEC 17 1985

GALEN LARSON, County Recorder	FEES \$
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GRANT OF EASEMENT AND RIGHT OF WAY

FF*

THIS INDENTURE, made and entered into this 18th day of November,
1985, by and between CHARLIE'S ENTERPRISES, INC., a California Corporation,
dba OK PRODUCE, as Grantors, and FRESNO METROPOLITAN FLOOD CONTROL DISTRICT,
a public corporation in the County of Fresno, State of California, as Grantee;

WITNESSETH:

That Grantors, for good and valuable consideration do hereby grant
to Grantee the perpetual and exclusive right and easement to construct, install,
operate, maintain, repair, and reconstruct a pipeline, and to flow and conduct
water through said pipeline, across, over, through and under the following
described real property in the County of Fresno, State of California, to wit:

BEGINNING at a point on the centerline of Calavara Street,
80 feet in width, said point lying 5.84 feet Northeasterly from
the Northeasterly line of "G" Street as said streets are shown on
the map of the City of Fresno, recorded June 8, 1876 in Book 1,
Pages 2 and 3 of Plats in the Office of the County Recorder of
Fresno County; thence N 48° 30' 54" E, along said centerline of
Calavera Street, a distance of 244.16 feet to a point which lies
S 48° 30' 54" W, a distance of 50.00 feet from the centerline of
Southern Pacific Transportation Company's main track; thence
N 41° 30' 55" W, parallel with said main track a distance of 25.00
feet; thence S 48° 30' 54" W, parallel with and 25.00 feet Northwesterly
of said centerline of Calavera Street, a distance of 243.52 feet; thence
S 40° 03' 08" E, a distance of 25.01 feet to the POINT OF BEGINNING.

together with all rights necessary, convenient or incidental thereto with all
rights of ingress to and egress from said right of way and pipeline over and
across said real property of Grantors for the construction, installation,
operation, maintenance, repair and reconstruction of said pipeline.

IN WITNESS WHEREOF, Grantors have executed this grant the day and year
first above written.

GRANTOR:

CHARLIE'S ENTERPRISES, INC.,
a California Corporation

By Charlie Larson Date 11-18-85
By Walter Upton

85128081 SAFECO
TITLE INSURANCE

STATE OF CALIFORNIA
COUNTY OF Fresno }
On this the 18th day of Nov. 19 85 before me,
the undersigned, a Notary Public in and for said County and State,
personally appeared Charles Matoian, Pres. &
Mathias F. Matoian, V.Pres. personally
known to me or proved to me on the basis of satisfactory evidence to be
the President and V.President of
Charles Enterprises, Inc. personally
known to me or proved to me on the basis of satisfactory evidence to be

Secretary of the corporation that executed the within
instrument on behalf of the corporation therein named, and acknowledg-
edged to me that such corporation executed the within instrument
pursuant to its by-laws or a resolution of its board of directors.

Signature *Alma Margosian*

Alma Margosian

FOR NOTARY SEAL OR STAMP



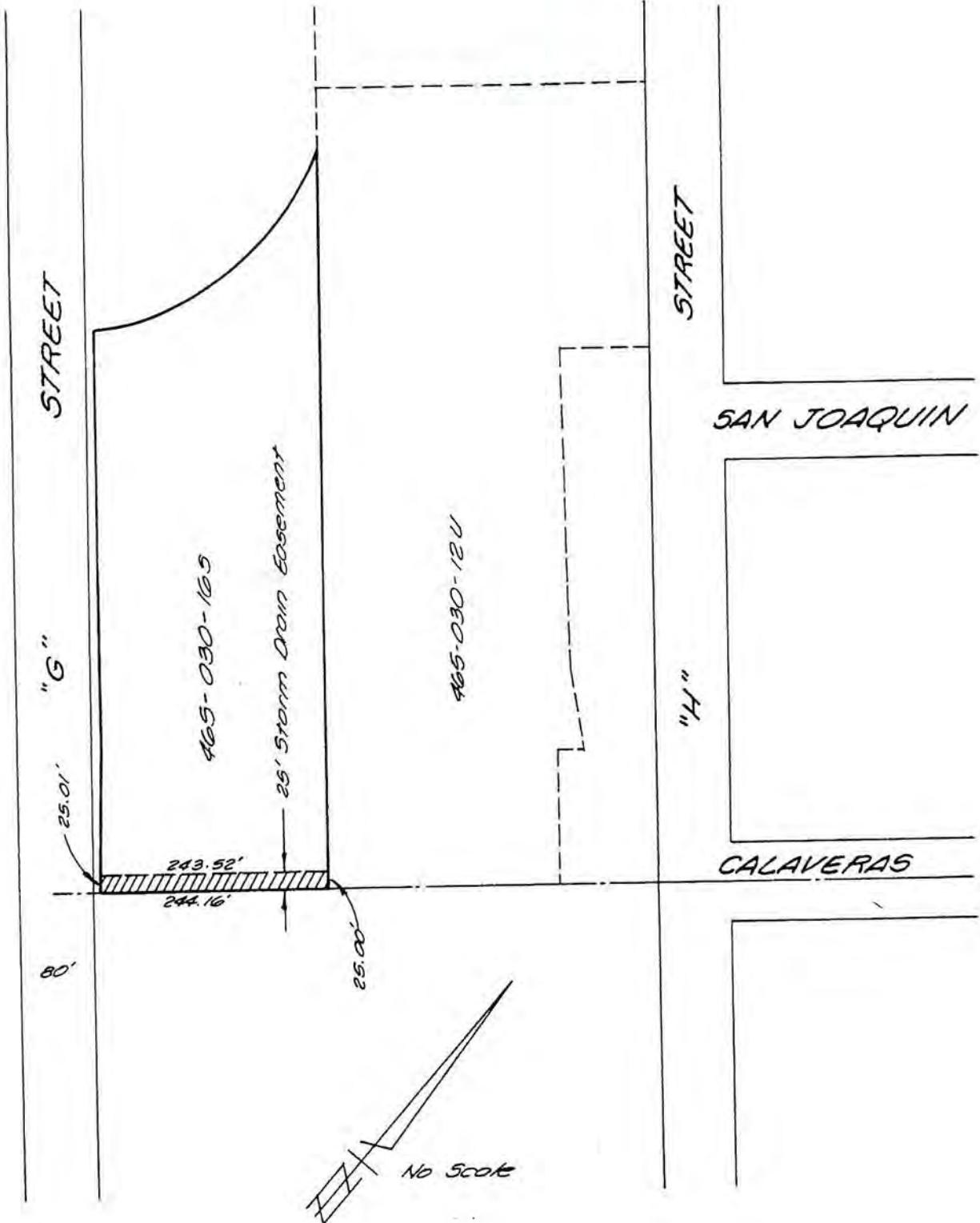
CERTIFICATE OF ACCEPTANCE

In accordance with the provisions of §27281 of the Government Code of the
State of California, this is to certify that the interest in real property
conveyed by the attached instrument dated November 18, 1985
from Charlie's Enterprises, Inc., dba OK Produce

to the Fresno Metropolitan Flood Control District, a public corporation, is
hereby accepted by the undersigned General Manager on behalf of the Board of
Directors of the Fresno Metropolitan Flood Control District, pursuant to
authority conferred by Resolution No. 791 and Resolution No. 1073 of said Board
of Directors adopted on September 11, 1972 and July 9, 1979, respectively, and
said District hereby consents to recordation thereof by and through its duly
authorized officer.

Dated: December 6, 1985 By: Doug Harrison
General Manager





NEW

DOCUMENT

August 26, 1994

I

FF - 34

Page 1 of 5

DEED

AUDIT No. 7021D

RELMIS: B-205.65

THIS INDENTURE, made this 14th day of September, 1994,
by and between SOUTHERN PACIFIC TRANSPORTATION COMPANY, a Delaware
corporation, herein termed "Railroad," and FRESNO METROPOLITAN
FLOOD CONTROL DISTRICT, a body politic, address: 5469 Olive
Avenue, Fresno, California 93727, herein termed "Grantee";

WITNESSETH:

1. Railroad hereby grants to Grantee, subject to the reservations, covenants and conditions herein contained, the right to construct, reconstruct, maintain and operate an 72-inch storm drain pipeline, hereinafter referred to as "structure," in, upon, along, across and beneath property and tracks of Railroad, at or near Fresno, in the County of Fresno, State of California, crossing the centerline of said tracks at Engineer's Station 5937+20, Milepost B-205.65, in the location shown on the prints of Railroad's Drawing Nos. B-205.65-X, Sheet No. 1, dated July 14, 1994 and A-14960, both attached and made a part hereof.

In addition, Railroad hereby grants to Grantee a temporary construction area in, upon, along, across and beneath property of Railroad in the location shown on said Drawing No. A-14960. This construction area is only temporary and will terminate upon the completion of construction work.

Said structure shall be installed in accordance with minimum requirements of Form C. S. 1741, also attached and made a part hereof.

Upon execution hereof, Grantee shall pay Railroad the sum of Five Hundred Ninety Dollars (\$590) partially to defray cost of handling.

In addition, as monetary consideration for the rights herein granted, Grantee shall pay to Railroad the sum of Nine Thousand Eight Hundred Dollars (\$9,800).

- 2. Project markers in form and size satisfactory to Railroad, identifying the facility and its owner, will be installed and constantly maintained by and at the expense of Grantee at Railroad property lines or such locations as Railroad shall approve. Such

FNFCD COPY

markers shall be relocated or removed upon request of Railroad without expense to Railroad.

Absence of markers does not constitute a warranty by Railroad of no subsurface installations.

3. There is reserved unto Railroad, its successors and assigns and anyone acting with the permission of Railroad the right (consistent with the rights herein granted) to construct, reconstruct, maintain and use existing and future railroad tracks, facilities and appurtenances and existing and future transportation, communication (including fiber optic telecommunication systems) and pipeline facilities and appurtenances in, upon, over, under, across and along said property.

4. This grant is made subject to all licenses, leases, easements, restrictions, conditions, covenants, encumbrances, liens and claims of title which may affect said property and the word "grant" as used herein shall not be construed as a covenant against the existence of any thereof.

5. The rights herein granted to Grantee shall lapse and become void if the construction of said structure upon said property is not commenced within one (1) year from the date first herein written.

6. Grantee shall bear the entire cost and expense of constructing, reconstructing and maintaining said structure upon said property.

Grantee, its agents and employees, subject to the provisions hereof, shall have the privilege of entry on said property for the purpose of constructing, reconstructing, maintaining and making necessary repairs to said structure provided that:

(a) Grantee shall give Railroad's division superintendent at least five (5) days' written notice prior to commencement of any work on said structure except emergency repairs in which event, Grantee shall notify Railroad's authorized representative by phone; and

(b) Grantee, at least five (5) days prior to performing any digging activities on the premises of Railroad, must call 1-800-AT-FIBER (available 24 hours) to receive a Southern Pacific Telecommunications Company control number. Grantee will be advised if a telecommunications system is buried anywhere on or about the premises of Railroad in the location where Grantee will perform such digging activities. If there is a telecommunications system, Grantee will be advised as to the owner of the telecommunications

system and provided instructions on arranging for a cable locator and will be advised whether relocation or other protection for the telecommunications system is required prior to beginning any work on the premises of Railroad.

Grantee agrees to reimburse Railroad for the cost and expense to Railroad of furnishing any materials or performing any labor in connection with the construction, reconstruction, maintenance and removal of said structure, including, but not limited to, the installation and removal of such falsework and other protection beneath or along Railroad's tracks, and the furnishing of such watchmen, flagmen and inspectors as Railroad deems necessary.

Grantee agrees to reimburse Railroad and/or the owner of the telecommunication system for all expenses which either may incur which expenses would not have been incurred except by the reason of the use of said premises by Grantee, its agents, employees or invitees including relocation costs or any damages incurred by such owner due to the injury to the telecommunication system.

7. In the event Railroad shall at any time so require, Grantee, at Grantee's expense, shall reconstruct, alter, said structure or otherwise improve said structure upon receipt of written notice from Railroad so to do, provided, however, that this provision shall not be applicable if said structure has been constructed to accommodate Railroad trackage across the full width of Railroad's operating right-of-way.

8. Grantee shall, at its expense, comply with all applicable laws, regulations, rules and orders regardless of when they become or became effective, including, without limitation, those relating to health, safety, noise, environmental protection, waste disposal, and water and air quality, and furnish satisfactory evidence of such compliance upon request of Railroad.

Should any discharge, leakage, spillage, emission or pollution of any type occur upon or arise from the premises covered hereunder as a result of Grantee's use, presence, operations or exercise of the rights granted hereunder, Grantee shall, at its expense, be obligated to clean all property affected thereby, whether owned or controlled by Railroad, or any third person, to the satisfaction of Railroad (insofar as the property owned or controlled by Railroad is concerned) and any governmental body having jurisdiction in the matter. Railroad may, at its option, clean Railroad's premises; if Railroad elects to do so, Grantee shall pay Railroad the cost of such cleanup promptly upon the receipt of a bill therefor.

Grantee agrees to investigate, release, indemnify and defend Railroad from and against all liability, cost and expense

(including, without limitation, any fines, penalties, judgments, litigation costs and attorney fees) incurred by Railroad as a result of Grantee's breach of this section, or as a result of any such discharge, leakage, spillage, emission or pollution, regardless of whether such liability, cost or expense arises during the time this indenture is in effect or thereafter, unless such liability, cost or expense is caused by the sole negligence, gross negligence, willful misconduct or criminal actions of Railroad, its officers, agents or employees.

9. As part consideration, Grantee agrees to pay Railroad an amount equal to any and all assessments which may be levied by order of any authorized lawful body against the property of Railroad (and which may have been paid by Railroad) to defray any part of the cost or expense incurred in connection with the construction of said structure upon said property commenced within one (1) year from the date first herein written.

10. Grantee agrees to keep said property and said structure in good and safe condition, free from waste, so far as affected by Grantee's operations, to the satisfaction of Railroad. If Grantee fails to keep said property and said structure in a good and safe condition, free from waste, then Railroad may perform the necessary work at the expense of Grantee, which expense Grantee agrees to pay to Railroad upon demand.

11. No work on Railroad's premises shall be commenced by any contractor for Grantee until such contractor has entered into Railroad's Standard Contractor's Right of Entry agreement covering such work.

12. To the extent allowed by law, Grantee agrees to release, defend and indemnify Grantor from and against any and all liability, cost and expense for injury to or death of persons and damage to or destruction of property (including, but not limited to, the property and employees of each of the parties hereto), when arising or resulting out of or in any way connected with the performance of work under this Agreement, except when due to the sole negligence, gross negligence, willful misconduct or criminal actions of Grantor. This covenant of indemnity shall continue in full force and effect notwithstanding the full payment of all sums due under this Agreement, or the satisfaction, discharge or termination of this Agreement in any manner whatsoever.

* The word "Railroad" as used in this section shall be construed to include, in addition to Railroad, the successors, assigns and affiliated companies of Railroad and any other railroad company that may be lawfully operating upon and over the tracks crossing or adjacent to said structure, and the officers and employees thereof.

Page 5 of 5

13. Should Grantee, its successors or assigns, at any time abandon the use of said property, or any part thereof, or fail at any time to use the same for the purpose contemplated herein for a continuous period of one (1) year, the right hereby given shall cease to the extent of the use so abandoned or discontinued, and Railroad shall at once have the right, in addition to, but not in qualification of the rights hereinabove reserved, to resume exclusive possession of said property or the part thereof the use of which is so discontinued or abandoned.

Upon termination of the rights and privileges hereby granted, Grantee, at its own cost and expense, agrees to remove said structure from said property and restore said property as nearly as practicable to the same state and condition in which it existed prior to the construction of said structure. Should Grantee in such event fail, neglect or refuse to remove said structure and restore said property, such removal and restoration may be performed by Railroad, at the expense of Grantee, which expense Grantee agrees to pay to Railroad upon demand, or Railroad may, at its option, assume ownership of said structure.

14. The parties intend that the promises and obligations of this indenture shall constitute covenants running with the land so as to bind and benefit their respective successors and assigns.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed in duplicate the day and year first herein written.

SOUTHERN PACIFIC TRANSPORTATION COMPANY

By Jamie L. Moeller
(Title) Manager-Contracts

Attest: John M. Miller
SECRETARY

FRESNO METROPOLITAN FLOOD CONTROL DISTRICT

By Aug. Hanison Gen. Mgr.
(Title)

By _____
(Title)

State of California

County of San Francisco

On Sept. 13, 1994, before me Virginia Faire-Fong, Notary personally appeared Janie L. Moeller, personally known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.



Virginia Faire-Fong

CAPACITY CLAIMED BY SIGNER

Corporate Officer:

DESCRIPTION OF ATTACHED DOCUMENT

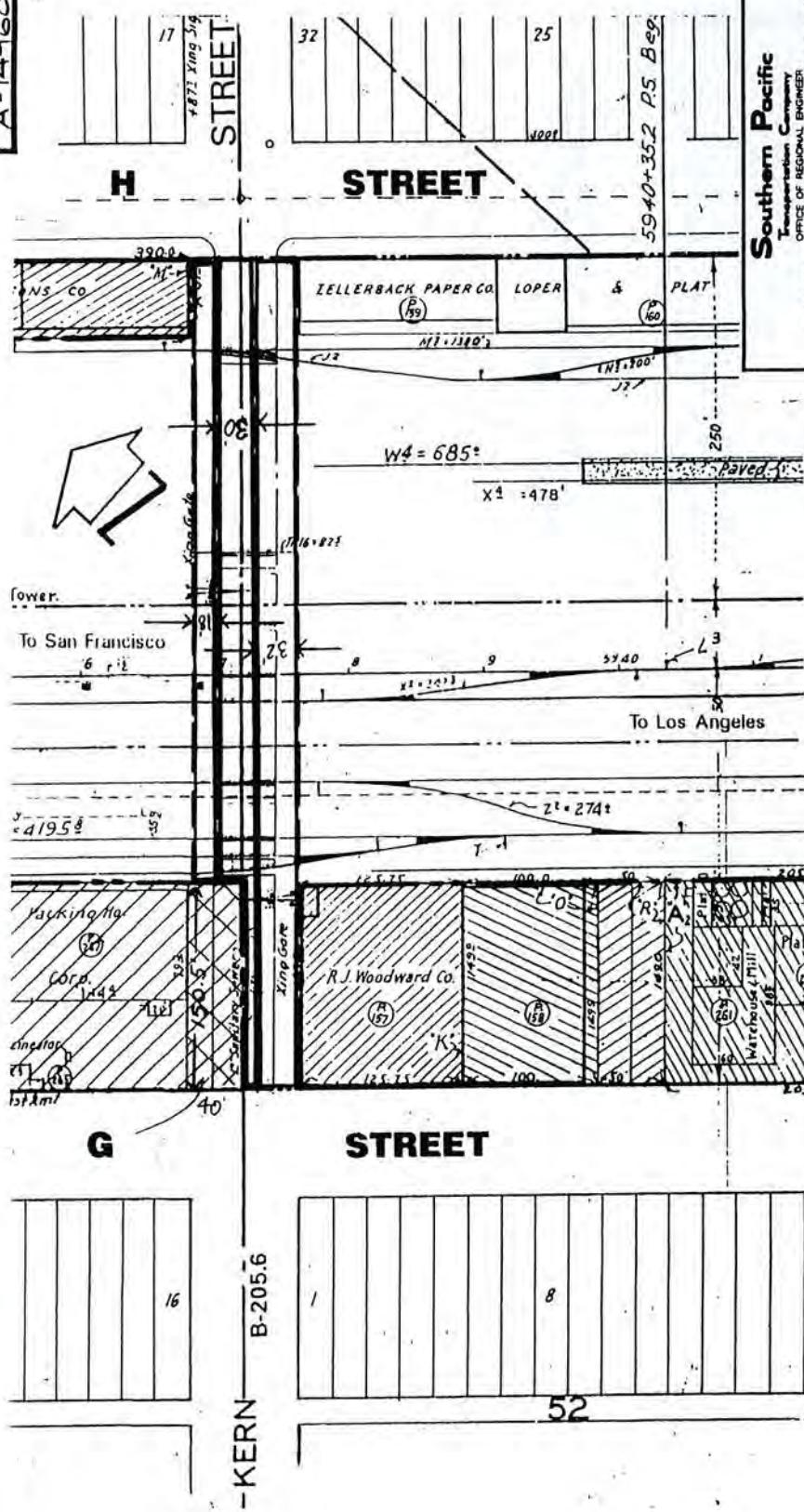
Indenture with Fresno
Metropolitan Flood Control
District

Manager-Contracts
(Title)

Number of Pages: 5 Date of Document: September 14, 1994

SIGNER IS REPRESENTING: Southern Pacific Transportation Company

A-14960



Southern Pacific Transportation Company
OFFICE OF REGIONAL ENGINEER
1200 CORPORATE CENTER DRIVE, MONTEREY PARK, CA 91754

FRESNO

PROPOSED 72-INCH STORM DRAIN
BY FRESNO METROPOLITAN FLOOD
CONTROL DISTRICT

SCALE 1" = 100'
VAL SEC V-103 SHEET 5-1b DRAWN BY RDB CHECKED BY
ROUTE NO B LIP 205.60 DRAWING NO A-14960
DATE JUNE SHEET NO ONE FILE DRAWER NC
REVISED TO

LEGEND

- SPTG PROPERTY LINES
- RED — STORM DRAIN EASEMENT
- BLUE — TEMPORARY CONSTRUCTION EASEMENT

7. DEPTH OF INSTALLATION

Refer to Figure 1 for minimum cover depths for pipeline crossings. Pipelines laid longitudinally on railway rights-of-way, 45 feet or less from centerline of track, shall be buried not less than 4 feet from ground surface to top of pipe. Where pipeline is laid more than 45 feet from centerline of track, minimum cover shall be at least 3 feet.

B. SHUT-OFF VALVES

Accessible emergency shut-off valves shall be installed within effective distances each side of the railway as agreed to by the Chief Engineer and the Pipeline Company. Where pipelines are provided with automatic control stations at locations and within distances approved by the Chief Engineer, no additional valves shall be required.

C. APPROVAL OF PLANS

Plans for proposed installation shall be submitted to Regional Engineer and must meet the approval of the Chief Engineer before construction begins. Plans shall be drawn in scale showing relation of proposed pipe line to railway tracks, angle of crossing, mile post location or railway survey station, right-of-way and general layout of tracks and railway facilities. Plans shall include all appurtenant features of the pipe line, such as valves, manholes, valve casing, etc., located on railway property.

Cross sections or profile shall show pipe line and appurtenant features as to the tracks and surrounding ground.

The execution of the work on railway rights-of-way shall be subject to the inspection and direction of the Regional Engineer or his authorized representative.

The plans shall contain the date that is required on the application form (C.E. 41-708, S.H.). The application form shall be completely filled in.

D. EXECUTION OF WORK

The Pipeline Agreement and Contractor's Right of Entry Agreement shall be fully executed before any work will be allowed on railway right-of-way. The execution of the work on railway rights-of-way, including the supporting of tracks, shall be subject to the inspection and direction of the Regional Engineer. A maximum of 5 days notice to railway is required prior to entry on rights-of-way for construction.

Table 1
Table for Determining Minimum Size of Casing

NOMINAL SIZE CARRIER	TYPE OF CARRIER PIPE AND STYLE OF JOINT NOMINAL SIZE CARRIER	MINIMUM NOMINAL SIZE OF CASING	V.C. PIPE		WELDED STEEL EXTRA STRONG
			AWWA DUCTILE IRON TITON	BELL-SPIGOT MECHANICAL	
3 1/4"	4"	10"	10"	8"	10"
2"	6"	14"	16"	10"	14"
1"	2 1/2"	14"	16"	12"	16"
1 1/4"	3"	16"	18"	12"	18"
1 1/2"	3 1/2"	10"	18"	20"	19"
2"	4"	12"	22"	22"	16"
2 1/2"	4 1/2"	14"	24"	24"	20"
3"	6"	16"	26"	28"	24"
3 1/2"	8"	18"	28"	30"	26"
4"	8"	20"	30"	32"	26"
6"	10"	24"	36"	36"	30"
		30"			36"
		36"			40"
					42"

Table 2
Steel Casing
(Casing with Protective Coating)

NOMINAL DIAMETER (inches)	MIN. WALL THICKNESS (inches)	SOUTHERN PACIFIC LINES COMMON STANDARD		PIPE LINES	
		MIL. WALL DIAMETER (inches)	MIL. WALL THICKNESS (inches)	MIL. WALL DIAMETER (inches)	MIL. WALL THICKNESS (inches)
16"	0.188"	44"	8.46"	44"	9.8"
18"	0.219"	48"	9.25"	50"	10.65"
20"	0.222"	52"	10.28"	52"	10.68"
24"	0.312"	54"	12.75"	54"	12.79"
26"	0.344"	56"	8.58"	56"	12.75"
28"	0.375"	60"	10.78"	60"	10.78"
30"	0.406"	62"	11.81"	62"	11.81"
32"	0.438"	64"	13.44"	64"	13.44"
34"	0.469"	66"	13.68"	66"	13.68"
36"	0.500"	70"	14.75"	70"	14.75"
40"	0.531"	72"	15.93"	72"	15.93"
42"	0.563"	72"	15.93"	72"	15.93"

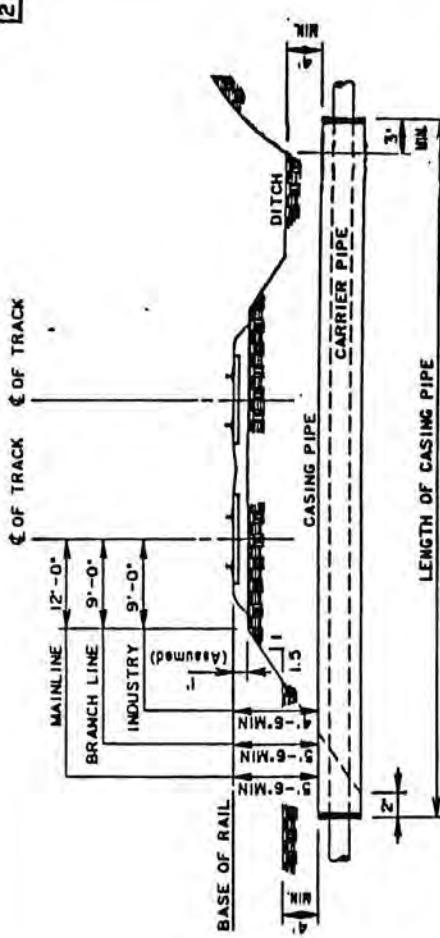


Figure 1
Casing Requirements

NEW

DOCUMENT

FF

J

Recording Requested by:
**Fresno Metropolitan Flood
 Control District**

And when Recorded, Mail to:

**Fresno Metropolitan Flood
 Control District
 5469 East Olive Avenue
 Fresno, CA 93727**

2003-112



FRESNO County Recorder
 Robert C. Werner

DOC- 2004-0086900

Acct 301-Fresno City Public Works

Wednesday, APR 21, 2004 10:20:51

Ttl Pd \$0.00

Nbr-0001455175

jzg/R2/1-6

SPACE ABOVE THIS LINE FOR RECORDER'S USE

APN 467-040-20s, -22s (portion)

PW-2003-14008

GRANT OF EASEMENT AND RIGHT-OF-WAY

THIS INDENTURE, made and entered into this 7 day of April, 2004 by
 and between the City of Fresno, a municipal corporation, as Grantor, and Fresno Metropolitan Flood
 Control District, a public corporation in the County of Fresno, State of California, as Grantee;

W I T N E S S E T H

That Grantor, for good and valuable consideration, does hereby grant to Grantee a
 perpetual and exclusive easement, subject to the terms herein, in that real property in the County of
 Fresno, State of California described in Exhibit "A" and shown in Exhibit "B" hereto to install,
 construct, operate, maintain, repair, remove and replace an underground storm drainage pipeline and
 to conduct water through the same, together with all rights necessary, convenient or incidental
 thereto, including a right of ingress thereto and egress therefrom over Grantor's property as described
 in Exhibit "C" hereto, provided that such access shall not unreasonably interfere with the enjoyment
 of said remainder by its owner.

No buildings may be constructed within said easement, and no trees may be planted therein, except the Grantor may plant shrubs and grasses or install sidewalks and parking areas for the use of the public and/or its employees.

IN WITNESS WHEREOF, Grantor has executed this Grant of Easement and Right of Way the day and year first above written.

CITY OF FRESNO, a municipal corporation

By: Michael T. Kirn
Michael T. Kirn, Assistant Director
Public Works Department

Date: 4/7/04
APPROVED TO FORM:
City Attorney
Daryl L. Balch

By:

CALIFORNIA ALL-PURPOSE ACKNOWLEDGEMENT

State of California
County of Fresno
On April 7, 2004 before me, Daryl L. Balch
(DATE) (NOTARY PUBLIC)
personally appeared, M. T. Kirn aka Michael T. Kirn
(NAME(S) OF SIGNERS)

personally known to me - OR -

proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Daryl L. Balch
SIGNATURE OF NOTARY

OPTIONAL SECTION	
<input type="checkbox"/> TOP OF THUMB	
<input type="checkbox"/> INDIVIDUAL(S) <input type="checkbox"/> CORPORATE OFFICER(S)	
TITLE(S)	
<input type="checkbox"/> PARTNERS <input type="checkbox"/> Limited <input type="checkbox"/> General	
<input type="checkbox"/> ATTORNEY-IN-FACT	
<input type="checkbox"/> TRUSTEE(S)	
<input type="checkbox"/> GUARDIANSHIP/CONSERVATOR	
SIGNER IS REPRESENTING: NAME OF PERSON(S) OR ENTITY(IES)	
<hr/> <hr/> <hr/>	
<input type="checkbox"/> TOP OF THUMB	

EXHIBIT "A"

LEGAL DESCRIPTION OF EASEMENT

APN 467-040-20S, -22S (portion)

A portion of Sections 9 and 10, Township 14 South, Range 20 East, Mount Diablo Base and Meridian according to the Official United States Government Township Plats thereof, in the City of Fresno, County of Fresno, State of California, being a portion of the land shown as Railroad Reservation on the Map of the Town of Fresno recorded in Book 1 of Plats at Pages 1, 2 and 3, Fresno County Records, more particularly described as follows:

A 20-foot wide strip of land, lying ten feet on each side of the following described centerline:

COMMENCING at the intersection of the southwesterly projection of the centerline of Kern Street with a line that is parallel with and 250 feet southwesterly from the southwesterly line of "H" Street, as said streets are shown on said Map of the Town of Fresno; thence southeasterly, parallel with and 250 feet southwesterly from the southwesterly line of "H" Street, a distance of 466.32 feet to the POINT OF BEGINNING of this described centerline; thence northeasterly a distance of 250 feet to a point on said southwesterly line of "H" Street, last said point being 466.32 feet southeasterly from the intersection of said southwesterly line of "H" Street with said southwesterly projection of the centerline of Kern Street, and last said point being the TERMINUS of this centerline.

The sidelines of this strip of land are to begin from a line that is parallel with and 250 feet southwesterly from the southwesterly line of "H" Street and are to terminate on said southwesterly line of "H" Street.

2003-112
PW-2003-14008

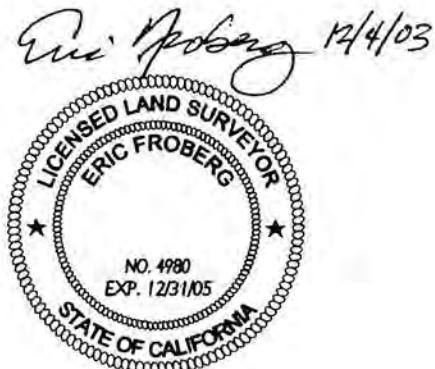


EXHIBIT "B"

2003-112

MONO ST.

INYO ST.

KERN ST.



SOUTHWESTERLY PROJECTION OF CENTRELINE OF MONO ST.

250.00'

40'

ST.

480.00'

400.00'

400.00'

59.
APN 467-040-235
SOUTHWESTERLY PROJECTION OF CENTRELINE OF MONO ST.
MAP OF THE TOWNS, PGS. 1, 2, & 3
BK 1 OF PLATS, RECORDS
FRESNO
FRESNO COUNTY
FRESNO

20' FMFCD PIPELINE EASEMENT
APN 467-040-205

10' 10'
APN 467-040-225

CENTERLINE OF PIPELINE & EASEMENT
POINT OF COMMENCEMENT

466.32

493.68

POINT OF BEGINNING

RAILROAD

RESERVATION



SOUTHWESTERLY PROJECTION OF CENTRELINE OF KERN ST.

250.00'

40'

"H"

480.00'

426.32

480.00'

APN 467-040-205

EXHIBIT "C"

LEGAL DESCRIPTION OF PARCEL FROM WHICH EASEMENT IS TO BE GRANTED

APN 467-040-20S, -22S, -23S

A portion of Sections 9 and 10, Township 14 South, Range 20 East, Mount Diablo Base and Meridian according to the Official United States Government Township Plats thereof, in the City of Fresno, County of Fresno, State of California, being a portion of the land shown as Railroad Reservation on the Map of the Town of Fresno recorded in Book 1 of Plats at Pages 1, 2 and 3, Fresno County Records, more particularly described as follows:

Beginning at the intersection of the southwesterly line of "H" Street with the southwesterly projection of the centerline of Mono Street as said streets are shown on said Map; thence northwesterly along the southwesterly line of "H" Street, as shown on said Map, 960 feet, more or less, to the intersection with the southwesterly projection of the centerline of Kern Street, as said streets are shown on said Map; thence southwesterly along the projected centerline of Kern Street 250 feet; thence southeasterly, along a line parallel with the southwesterly line of "H" Street, 960 feet, more or less, to the intersection with the southwesterly projection of the centerline of Mono Street, as said streets are shown on said Map; thence northeasterly, along the projected centerline of Mono Street, 250 feet to the Point of Beginning.

2003-112

5

CERTIFICATE OF ACCEPTANCE

In accordance with the provisions of 27281 of the Government Code of the State of California, this is to certify that the interest in real property conveyed by the attached instrument dated **April 7, 2004, City of Fresno**, to the Fresno Metropolitan Flood Control District, a public corporation, is hereby accepted by the undersigned General Manager-Secretary on behalf of the Board of Directors of the Fresno Metropolitan Flood Control District, pursuant to authority conferred by Resolution No. 1464 of said Board of Directors adopted December 13, 1988, and said District hereby consents to recordation thereof by and through its duly authorized officer.

Fresno Metropolitan Flood Control
District, a California public corporation

Dated: 4-20-04

By: Bob Van Wyk
Bob Van Wyk
General Manager-Secretary

NEW

DOCUMENT

RFP No.: HSR 11-16
CONTRACT PACKAGE 1C
South of Santa Clara St to South of East American Ave

ATTACHMENT NO.3, PAGE 1 OF 3

Drawing NO. CB1662

21) 42-inch diameter Storm drain in California Avenue (Labeled Railroad on drawing), (approx. STA.338+00) located within existing street Right of Way (California Avenue)

22) 72-inch diameter Storm drain (approx. STA. 340+00) located within the existing street Right of Way (Cherry Avenue)

23) 60-inch diameter Storm drain (approx. STA. 339+00) located in existing street Right of Way (Cherry Avenue) and Union Pacific Railroad Company agreement COPY K attached (Folder No. 1973-91)

Drawing NO. CB1663

24) 36-inch Storm drain in Lorena Street and Railroad Avenue (approx. STA's 348+70 – 350+20) located within existing street Right of Ways (Lorena Street and Railroad Avenue)

25) 36-inch Storm drain (approx. STA. 350+20) located in existing street Right of Way (Van Ness Avenue) and Union Pacific Railroad Company agreement COPY L attached (Audit 25481, Folder No. 2591-67)

26) 30-inch and 36-inch Storm drains in Florence Avenue and Railroad Avenue (approx. STA's 355+00 – 358+00) located within existing street Right of Ways (Florence Avenue and Railroad Avenue)

27) 30-inch Storm drain (approx. STA 358+00) located in existing Right of Way (Florence Avenue) and Union Pacific Railroad Company agreement COPY M attached (Folder No. 2459-16)

28) 24-inch and 30-inch Storm drains in Belgravia Avenue and Railroad Avenue (approx. STA's 364+00 – 366+00) located within existing street Right of Ways (Belgravia Avenue and Railroad Avenue)

29) 24-inch Storm drain (approx. STA 366+00) located in existing Right of Way (Belgravia Avenue) and UP Crossing Agreement (Folder No. 2591-66). Copy of Agreement attached

ATTACHMENT NO.3, PAGE 2 OF 3

Drawing No. CB1664

30) 72-inch and 84-inch Storm drains in Church Avenue (approx. STA's 373+00 – STA 375+00) located in existing street Right of Way (Church Avenue) and Union Pacific Railroad Company agreement COPY O (Audit 221581, Folder No. 1973-92)

- 31) 36-inch and 42-inch Storm drains in Railroad Avenue (approx. STA's 374+00 – 393+00) located within existing street Right of Way (Railroad Avenue)
- 32) 24-inch Storm drain (approx. STA 380+50) located within existing street Right of Way (East Avenue)

ATTACHMENT NO.3, PAGE 3 OF 3

Drawing No. CB1666

- 33) 24-inch Storm drain located in Golden State Boulevard (approx. STA 439+50 – 441+00) within existing street Right of Way and 24-inch Storm drain to east across private property (approx. STA 441+00) copy of easement unavailable.

**NOTE:
THIS MAP IS SCHEMATIC
DISTANCES ARE APPROXIMATE.**



LEGEND

-  Existing Facilities To Be Protected Or Relocated
 -  Existing Master Plan Facilities
 -  Inlet Boundary
 -  Drainage Area Boundary
 -  Private Facilities
 -  Major Storm Flow Path
 -  High Speed Train Right Of Way



$$1'' = 400'$$

HIGH SPEED TRAIN
DRAINAGE AREA "III"

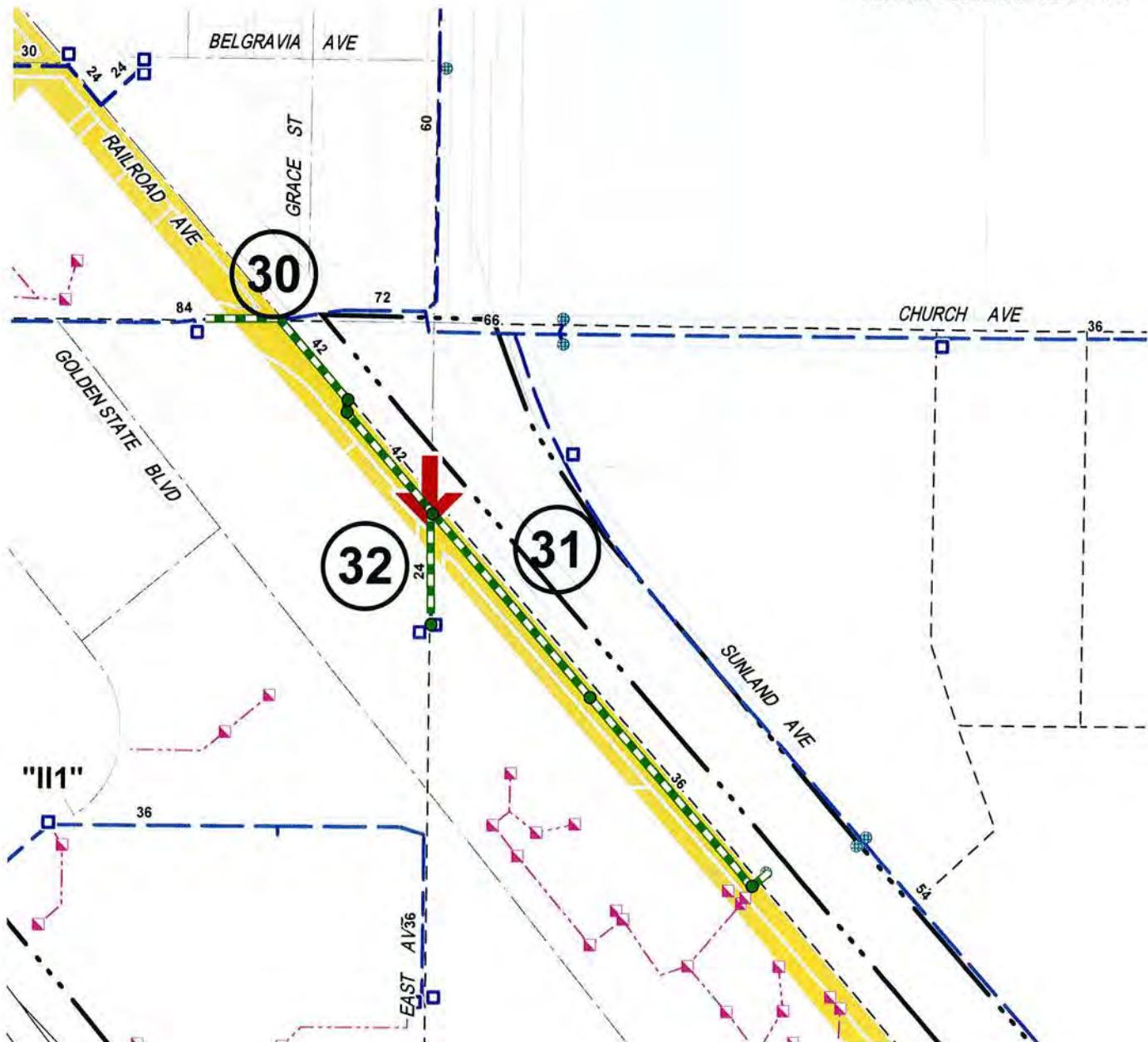
ATTACHMENT No. 3



FRESNO METROPOLITAN FLOOD CONTROL DISTRICT

Prepared by: wadet
Date: 4/26/2012

NOTE:
THIS MAP IS SCHEMATIC
DISTANCES ARE APPROXIMATE.



LEGEND

- Existing Facilities To Be Protected Or Relocated
- Existing Master Plan Facilities
- - - Inlet Boundary
- - - Drainage Area Boundary
- Private Facilities
- ↑ Major Storm Flow Path
- High Speed Train Right Of Way



1 " = 400 '

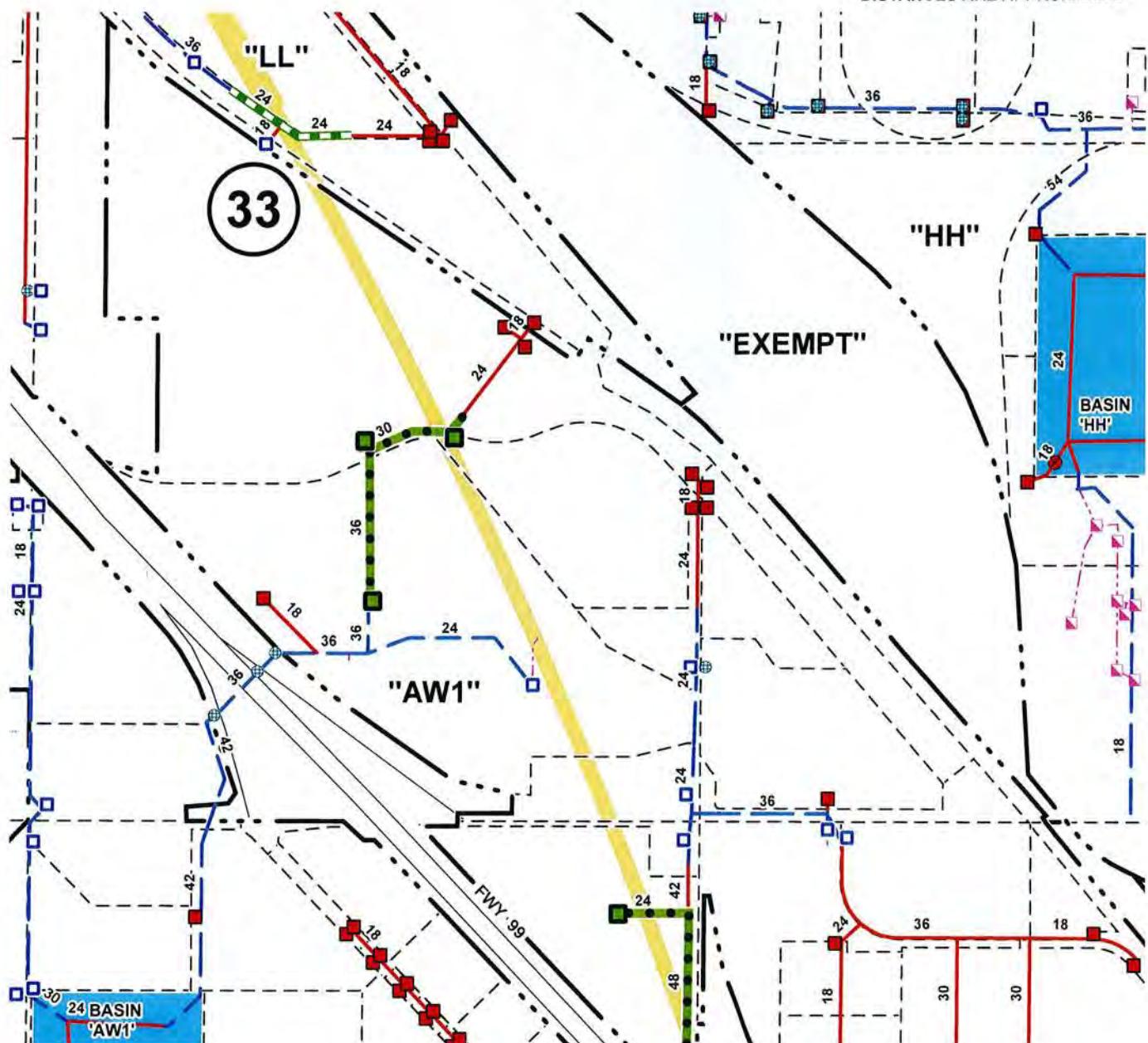
**HIGH SPEED TRAIN
DRAINAGE AREA "II1"**

ATTACHMENT No. 3
PAGE 2 OF 3



FRESNO METROPOLITAN FLOOD CONTROL DISTRICT

NOTE:
THIS MAP IS SCHEMATIC
DISTANCES ARE APPROXIMATE.



LEGEND

- - ■ ■ Master Plan Facilities To Be Constructed By High Speed Train
-Pipeline (Size Shown) & Inlet.
- - ■ ■ Existing Facilities To Be Protected Or Relocated
- - □ Existing Master Plan Facilities
- - ■ Future Master Plan Facilities
- - ■ Private Facilities
- - - Inlet Boundary
- - - Drainage Area Boundary
- ■ ■ High Speed Train Right Of Way



1 " = 600 '

HIGH SPEED TRAIN
DRAINAGE AREA "AW1" & "LL"

ATTACHMENT No. 3

PAGE 3 OF 3



FRESNO METROPOLITAN FLOOD CONTROL DISTRICT

Prepared by: wadet
Date: 4/26/2012

Path: K:\Autocad\DWGS\0EXHIBIT\HighSpeedRail\Attachment 1-3\3-3.mxd

NEW

DOCUMENT



PIPELINE CROSSING AGREEMENT

Mile Post: 206.50, Fresno Subdivision
Location: Fresno, Fresno County, California

THIS AGREEMENT is made and entered into as of May 14, 2001, by and between UNION PACIFIC RAILROAD COMPANY, a Delaware corporation (hereinafter the "Licensor"), and FRESNO METROPOLITAN FLOOD CONTROL DISTRICT (FMFCD), whose address is 5469 East Olive Avenue, Fresno, California 93727-2541 (hereinafter the "Licensee").

**IT IS MUTUALLY AGREED BY AND BETWEEN THE PARTIES HERETO AS
FOLLOWS:**

Article I. LICENSE FEE

Upon execution of this Agreement, the Licensee shall pay to the Licensor a one-time license fee of **THREE THOUSAND FIVE HUNDRED DOLLARS (\$3,500.00)** and an administrative handling fee of **FIVE HUNDRED DOLLARS (\$500.00)**.

Article II. LICENSOR GRANTS RIGHT.

In consideration of the License Fee to be paid by the Licensee and in further consideration of the covenants and agreements herein contained to be by the Licensee kept, observed and performed, the Licensor hereby grants to the Licensee the right to construct and thereafter, during the term hereof, to maintain and operate only a

60-inch storm water pipeline crossing (hereinafter the "Pipeline")

in the location shown and in conformity with the dimensions and specifications indicated on the attached print dated March 22, 2001, marked Exhibit A. Under no circumstances shall Licensee modify the use of the Pipeline for a purpose other than the above-mentioned, and said Pipeline shall not be used for any other use, whether such use is currently technologically possible, or whether such use may come into existence during the life of this Agreement.

Article III. CONSTRUCTION, MAINTENANCE AND OPERATION.

The grant of right herein made to the Licensee is subject to each and all of the terms, provisions, conditions, limitations and covenants set forth herein and in Exhibit B, hereto attached.

Article IV. IF WORK IS TO BE PERFORMED BY CONTRACTOR.

If a contractor is to do any of the work performed on the Pipeline (including initial construction and subsequent relocation or substantial maintenance and repair work), then the Licensee shall require its contractor to execute the Railroad's form Contractor's Right of Entry Agreement. Licensee acknowledges receipt of a copy of the Contractor's Right of Entry Agreement and understanding of its terms, provisions, and requirements, and will inform its contractor of the need to execute the Agreement. Under no circumstances will Licensee's contractor be allowed onto Lessor's premises without first executing the Contractor's Right of Entry Agreement.

Article V. INSURANCE

- A. The Licensee, at its expense, shall obtain the insurance described in Exhibit B-1, hereto attached. The Licensee will also provide to the Lessor a Certificate of Insurance, identifying Folder No. 1973-91, issued by its insurance carrier confirming the existence of such insurance and that the policy or policies contain the following endorsement:

UNION PACIFIC RAILROAD COMPANY is named as an additional insured with respect to all liabilities arising out of the existence, use or any work performed on or associated with the 'Pipeline' located on Railroad right-of-way at Mile Post 206.50 on the Fresno Subdivision, at or near Fresno, Fresno County, California.

- B. If the Licensee named in this Agreement is a public entity subject to any applicable statutory tort laws, the limits of insurance described in Exhibit B-1 shall be the limits the Licensee then has in effect or which is required by applicable current or subsequent law, whichever is greater, a portion of which may be self-insured with the consent and approval of the Lessor

- C. All insurance correspondence shall be directed to:

Folder No. 1973-91
Union Pacific Railroad Company
Real Estate Department
1800 Farnam Street
Omaha, NE 68102

Article VI. TERM.

This Agreement shall take effect as of the date first herein written and shall continue in full force and effect until terminated as herein provided.

Article VII. AMENDMENT TO EXHIBIT B

Section 13(b) of Exhibit B, hereto attached, is deleted.

Article VIII. SPECIAL PROVISIONS

Shoring is required per drawing 106612, copy attached as Exhibit A-1. Shoring must be

designed, checked and stamped by a professional engineer licensed in the state of California. Shoring must be submitted for approval.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date first herein written.

UNION PACIFIC RAILROAD COMPANY

By: _____
Manager Contracts

**FRESNO METROPOLITAN FLOOD
CONTROL DISTRICT (FMFCD)**

By 
Amy L. Korman
The District Engineer

JUN-15-2001 FRI 11:48 AM FMFCO

JUN-15-2001 00:56

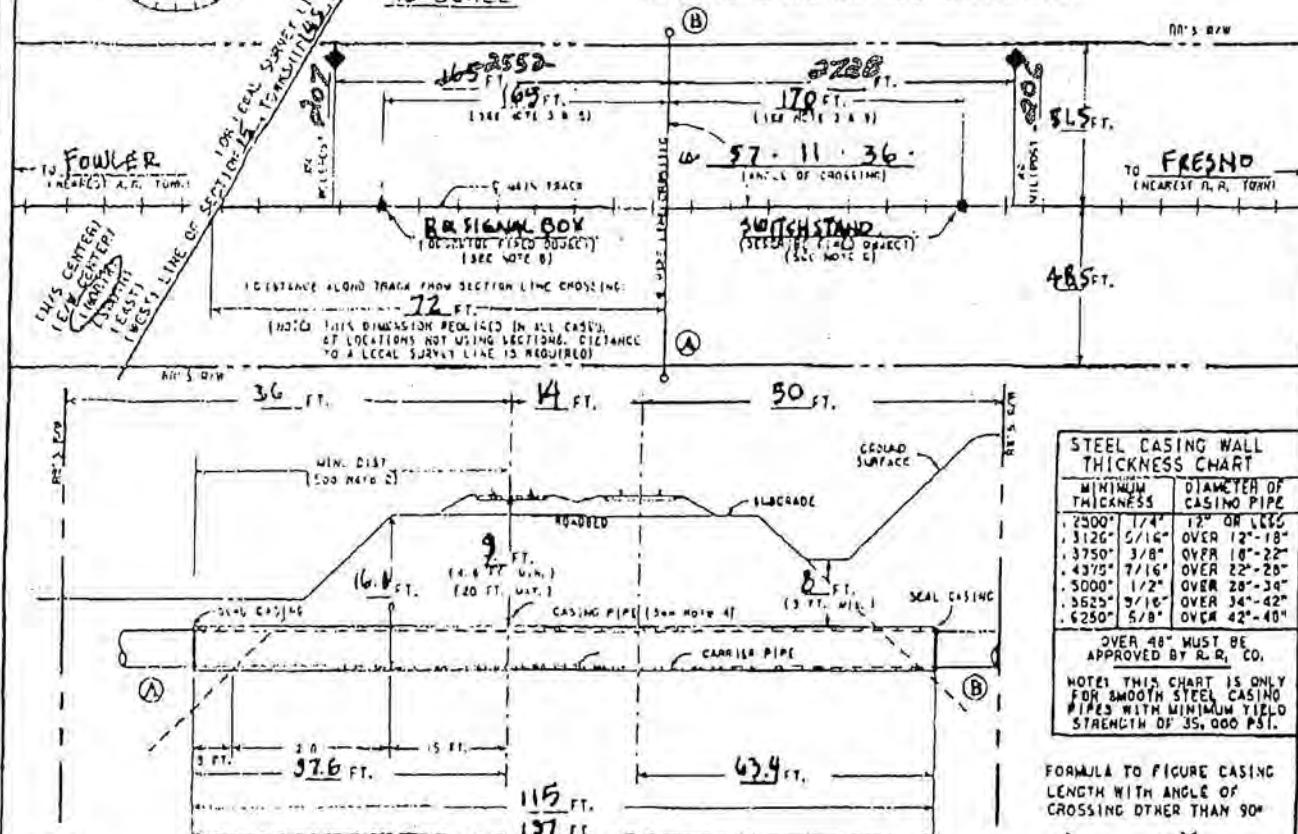
BOYLE ENGINEERING

FAX NO. 5594562452

559 448 8233

P. 02

P.02/02

PLACE ARROW INDICATING NORTH
DIRECTION RELATIVE TO CROSSINGFORM DR-0404-B
REV. 5-15-98
WWW.UPRR.COMENCASED NON-FLAMMABLE
PIPELINE CROSSINGNOTE: ALL AVAILABLE DIMENSIONS MUST BE
FILLED IN TO PROCESS "HIS" APPLICATION.

STEEL CASING WALL THICKNESS CHART	
MINIMUM THICKNESS	DIA/METER OF CASING PIPE
2500"	1/4" OVER 12" OR LESS
3125"	5/16" OVER 12"-18"
3750"	3/8" OVER 18"-22"
4375"	7/16" OVER 22"-26"
5000"	1/2" OVER 26"-34"
5625"	9/16" OVER 34"-42"
6250"	5/8" OVER 42"-48"

OVER 48" MUST BE APPROVED BY ICRC CO.
NOTE: THIS CHART IS ONLY FOR SMOOTH STEEL CASING PIPES WITH MINIMUM YIELD STRENGTH OF 35,000 PSI.

FORMULA TO FIGURE CASING LENGTH WITH ANGLE OF CROSSING OTHER THAN 90°

$\frac{L}{\sin \theta}$ WHERE L = CASING LENGTH
 θ = ANGLE OF CROSSING
 $H.DIST.$ = HORIZONTAL DISTANCE
 TAB = TOTAL LENGTH

- NOTES:
 1) ALL HORIZONTAL DISTANCES TO BE MEASURED AT RIGHT ANGLES (90°) OF TRACK.
 2) CASING TO EXCEED THE % OF TRACK AT RIGHT ANGLES TWO FEET OR 20 FT., OR 30 FT., AND BEYOND LIMIT OF RAILROAD RIGHT-OF-WAY IF NECESSARY TO PROVIDE PROPER LENGTH OUTSIDE OF TRACK.
 3) MINIMUM OF 50 FT. FROM THE END OF ANY RAILROAD BRIDGE, OR OF ANY CULVERT, OR FROM ANY SWITCHING AREA.
 4) SIGNAL REPRESENTATIVE MUST BE PRESENT DURING INSTALLATION IF RAILROAD SIGNALS ARE IN THE VICINITY OF CROSSING.
 5) ALLOWABLE FIXED OBJECTS INCLUDE BACKWALLS OF BRIDGES; OR OF ROAD CROSSINGS & OVERHEAD VARIOUS; CIVIC ROAD NAME; OR CULVERTS.
 6) CASING AND CARRIER PIPE MUST BE PLACED A MINIMUM OF 5 FEET BELOW THE EXISTING FIBER OPTIC CABLE. ANY EXCAVATION REQUIRED WITHIN 5 FEET OF THE EXISTING FIBER OPTIC CABLE MUST BE HAND DUG.

- A) IS PIPELINE CROSSING WITHIN DEDICATED STREET? YES NO;
 B) IF YES, NAME OF STREET N/A OR TRANSMISSION LINE N/A
 C) CARRIER PIPE:
 COMMODITY TO BE CONVEYED STORM WATER
 OPERATING PRESSURE psi
 WALL THICKNESS 6 1/4" DIAMETER 60" MATERIAL RCP CLT
 E1) CASING PIPE:
 WALL THICKNESS N/A DIAMETER N/A MATERIAL N/A
 NOTE: CASING MUST HAVE 2" CLEARANCE BETWEEN GREATEST OUTSIDE DIAMETER OF CARRIER PIPE AND INTERIOR DIAMETER OF CASING PIPE. WHEN FURNISHING DIMENSIONS, GIVE OUTSIDE OF CARRIER PIPE AND INSIDE OF CASING PIPE.
 F1) METHOD OF INSTALLING CASING PIPE UNDER TRACK(S):
 --- DRY BORE AND JACK (WET BORE NOT PERMITTED)
 --- TUNNEL; OTHER DIRECT TACK AND BORE
 G) WILL CONSTRUCTION BE BY AN OUTSIDE CONTRACTOR? YES NO;
 H) DISTANCE FROM CENTER LINE OF TRACK TO NEAR FACE OF BORING AND JACKING PITS WHEN MEASURED AT RIGHT ANGLES TO TRACK. 130 MM.
 I) APPLICANT HAS CONTACTED 1-800-336-9193, U. P. COMMUNICATION DEPARTMENT, AND HAS DETERMINED FIBER OPTIC CABLE DOES NOT EXIST IN VICINITY OF WORK TO BE PERFORMED. TICKET NO. 10215011 / MARK BROWN

EXHIBIT "A"

(FOR RAILROAD USE ONLY)

UNION PACIFIC RAILROAD CO.

FRESNO

FRESNO, CA

M. P. 206.50 E. S. 5981+95
ENCASED P/L CROSSING AT
FRESNO FRESNO CA
 RR FILE NO. 1988-91 DATE 6/18/01

WARNING
 IN ALL OCCASIONS, U. P. COMMUNICATIONS DEPARTMENT MUST BE CONTACTED IN ADVANCE OF ANY WORK TO DETERMINE EXISTENCE AND LOCATION OF FIBER OPTIC CABLE.
 PHONE 1-800-336-9193

TOTAL P.02

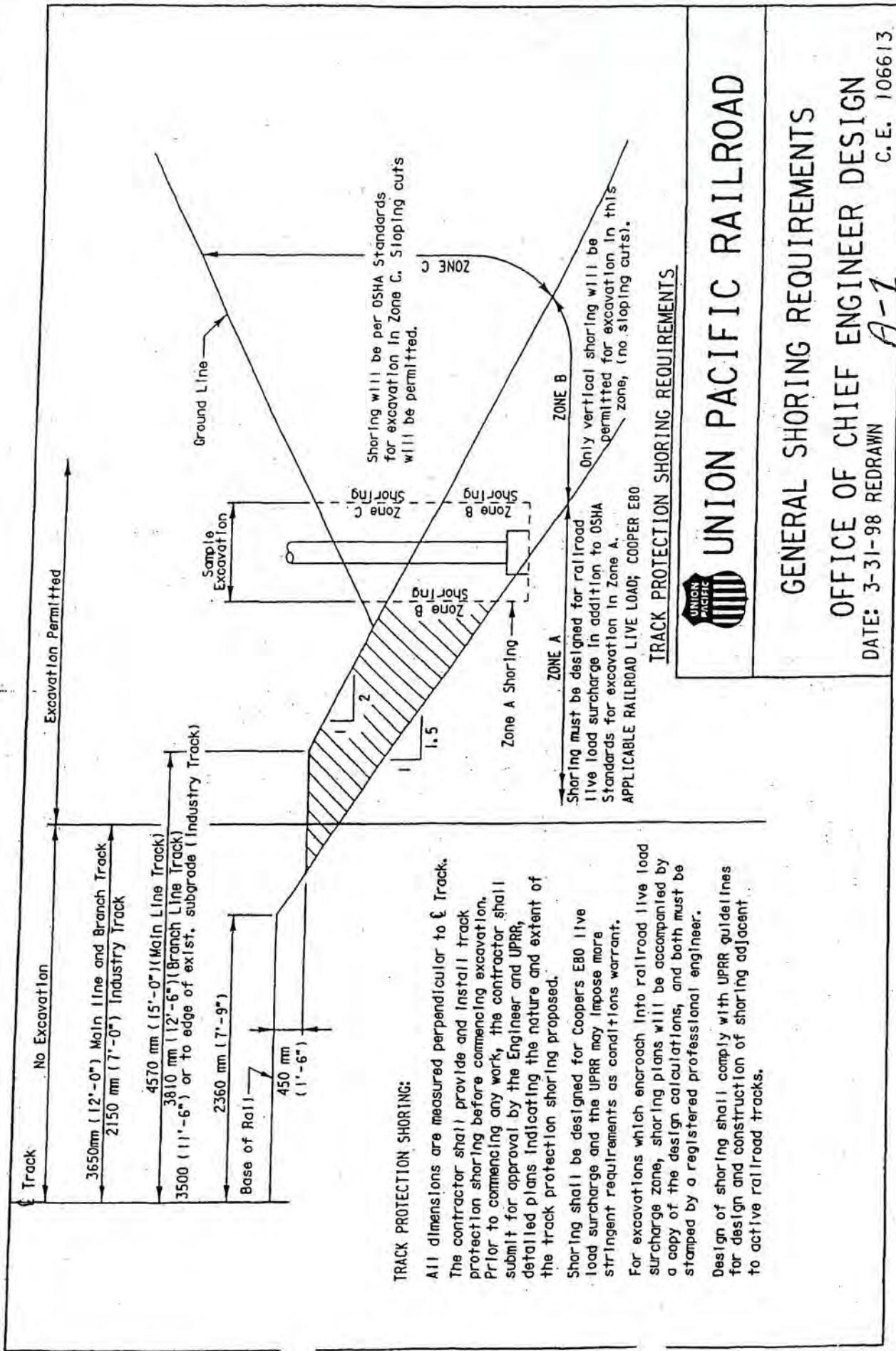


EXHIBIT B

Section 1. LIMITATION AND SUBORDINATION OF RIGHTS GRANTED.

(a) The foregoing grant of right is subject and subordinate to the prior and continuing right and obligation of the Licensor to use and maintain its entire property including the right and power of the Licensor to construct, maintain, repair, renew, use, operate, change, modify or relocate railroad tracks, signal, communication, fiber optics, or other wirelines, pipelines and other facilities upon, along or across any or all parts of its property, all or any of which may be freely done at any time or times by the Licensor without liability to the Licensee or to any other party for compensation or damages.

(b) The foregoing grant is also subject to all outstanding superior rights (including those in favor of licensees and lessees of the Licensor's property, and others) and the right of the Licensor to renew and extend the same, and is made without covenant of title or for quiet enjoyment.

Section 2. CONSTRUCTION, MAINTENANCE AND OPERATION.

(a) The Pipeline shall be constructed, operated, maintained, repaired, renewed, modified and/or reconstructed by the Licensee in strict conformity with Union Pacific Railroad Co. Common Standard Specification 1029 adopted November 1949, and all amendments thereto and supplements thereto, which by this reference is hereby made a part hereof, except as may be modified and approved by the Licensor's Vice President-Engineering Services. In the event such Specification conflicts in any respect with the requirements of any federal, state or municipal law or regulation, such requirements shall govern on all points of conflict, but in all other respects the Specification shall apply.

(b) All work performed on property of the Licensor in connection with the construction, maintenance, repair, renewal, modification or reconstruction of the Pipeline shall be done to the satisfaction of the Licensor.

(c) Prior to the commencement of any work in connection with the construction, maintenance, repair, renewal, modification, relocation, reconstruction or removal of the Pipeline where it passes underneath the roadbed and track or tracks of the Licensor, the Licensee shall submit to the Licensor plans setting out the method and manner of handling the work, including the shoring and cribbing, if any, required to protect the Licensor's operations, and shall not proceed with the work until such plans have been approved by the Vice President-Engineering Services of the Licensor and then the work shall be done to the satisfaction of the Vice President-Engineering Services or his authorized representative. The Licensor shall have the right, if it so elects, to provide such support as it may deem necessary for the safety of its track or tracks during the time of construction, maintenance, repair, renewal, modification, relocation, reconstruction or removal of the Pipeline, and, in the event the Licensor provides such support, the Licensee shall pay to the Licensor, within fifteen (15) days after bills shall have been rendered therefor, all expense incurred by the Licensor in connection therewith, which expense shall include all assignable costs.

(d) The Licensee shall keep and maintain the soil over the Pipeline thoroughly compacted and the grade even with the adjacent surface of the ground.

Section 3. NOTICE OF COMMENCEMENT OF WORK.

If an emergency should arise requiring immediate attention, the Licensee shall provide as much notice as practicable to Licensor before commencing any work. In all other situations, the Licensee shall notify the Licensor at least ten (10) days (or such other time as the Licensor may allow) in advance of the commencement of any work upon property of the Licensor in connection with the construction, maintenance, repair, renewal, modification, reconstruction, relocation or removal of the Pipeline. All such work shall be prosecuted diligently to completion.

Section 4. LICENSEE TO BEAR ENTIRE EXPENSE.

The Licensee shall bear the entire cost and expense incurred in connection with the construction, maintenance, repair and renewal and any and all modification, revision, relocation, removal or reconstruction of the Pipeline, including any and all expense which may be incurred by the Licensor in connection therewith for supervision, inspection, flagging, or otherwise.

Section 5. REINFORCEMENT, RELOCATION OR REMOVAL OF PIPELINE.

(a) The license herein granted is subject to the needs and requirements of the Lessor in the operation of its railroad and in the improvement and use of its property, and the Licensee shall, at the sole expense of the Licensee, reinforce the Pipeline, or move all or any portion of the Pipeline to such new location as the Lessor may designate, whenever, in the furtherance of its needs and requirements, the Lessor shall find such action necessary or desirable.

(b) All the terms, conditions and stipulations herein expressed with reference to the Pipeline on property of the Lessor in the location hereinbefore described shall, so far as the Pipeline remains on the property, apply to the Pipeline as modified, changed or relocated within the contemplation of this section.

Section 6. NO INTERFERENCE WITH LESSOR'S OPERATION.

The Pipeline and all parts thereof within and outside of the limits of the property of the Lessor shall be constructed and, at all times, maintained, repaired, renewed and operated in such manner as to cause no interference whatsoever with the constant, continuous and uninterrupted use of the tracks, property and facilities of the Lessor, and nothing shall be done or suffered to be done by the Licensee at any time that would in any manner impair the safety thereof.

Section 7. PROTECTION OF FIBER OPTIC CABLE SYSTEMS.

(a) Fiber optic cable systems may be buried on the Lessor's property. Protection of the fiber optic cable systems is of extreme importance since any break could disrupt service to users resulting in business interruption and loss of revenue and profits. Licensee shall telephone the Lessor at 1-800-336-9193 (a 24-hour number) to determine if fiber optic cable is buried anywhere on the Lessor's premises to be used by the Licensee. If it is, Licensee will telephone the telecommunications company(ies) involved, arrange for a cable locator, make arrangements for relocation or other protection of the fiber optic cable, all at Licensee's expense, and will commence no work on the right of way until all such protection or relocation has been accomplished. Licensee shall indemnify and hold the Lessor harmless from and against all costs, liability and expense whatsoever (including, without limitation, attorneys' fees, court costs and expenses) arising out of or caused in any way by Licensee's failure to comply with the provisions of this paragraph.

(b) In addition to other indemnity provisions in this Agreement, the Licensee shall indemnify and hold the Lessor harmless from and against all costs, liability and expense whatsoever (including, without limitation, attorneys' fees, court costs and expenses) caused by the negligence of the Licensee, its contractor, agents and/or employees, resulting in (1) any damage to or destruction of any telecommunications system on Lessor's property, and/or (2) any injury to or death of any person employed by or on behalf of any telecommunications company, and/or its contractor, agents and/or employees, on Lessor's property, except if such costs, liability or expenses are caused solely by the direct active negligence of the Lessor. Licensee further agrees that it shall not have or seek recourse against Lessor for any claim or cause of action for alleged loss of profits or revenue or loss of service or other consequential damage to a telecommunication company using Lessor's property or a customer or user of services of the fiber optic cable on Lessor's property.

Section 8. CLAIMS AND LIENS FOR LABOR AND MATERIAL; TAXES.

(a) The Licensee shall fully pay for all materials joined or affixed to and labor performed upon property of the Lessor in connection with the construction, maintenance, repair, renewal, modification or reconstruction of the Pipeline, and shall not permit or suffer any mechanic's or materialman's lien of any kind or nature to be enforced against the property for any work done or materials furnished thereon at the instance or request or on behalf of the Licensee. The Licensee shall indemnify and hold harmless the Lessor against and from any and all liens, claims, demands, costs and expenses of whatsoever nature in any way connected with or growing out of such work done, labor performed, or materials furnished.

(b) The Licensee shall promptly pay or discharge all taxes, charges and assessments levied upon, in respect to, or on account of the Pipeline, to prevent the same from becoming a charge or lien upon property of the Lessor, and so that the taxes, charges and assessments levied upon or in respect to such property shall not be increased because of the location, construction or maintenance of the Pipeline or any improvement, appliance or fixture connected therewith placed upon such property, or on account of the Licensee's interest therein. Where such tax, charge or assessment may not be separately made or assessed to the Licensee but shall be included in the assessment of the property of the Lessor, then the Licensee shall pay to the Lessor an equitable proportion of such taxes determined by the value of the Licensee's property upon property of the Lessor as compared

with the entire value of such property.

Section 9. RESTORATION OF LICENSOR'S PROPERTY.

In the event the Licensor authorizes the Licensee to take down any fence of the Licensor or in any manner move or disturb any of the other property of the Licensor in connection with the construction, maintenance, repair, renewal, modification, reconstruction, relocation or removal of the Pipeline, then in that event the Licensee shall, as soon as possible and at Licensee's sole expense, restore such fence and other property to the same condition as the same were in before such fence was taken down or such other property was moved or disturbed, and the Licensee shall indemnify and hold harmless the Licensor, its officers, agents and employees, against and from any and all liability, loss, damages, claims, demands, costs and expenses of whatsoever nature, including court costs and attorneys' fees, which may result from injury to or death of persons whomsoever, or damage to or loss or destruction of property whatsoever, when such injury, death, damage, loss or destruction grows out of or arises from the taking down of any fence or the moving or disturbance of any other property of the Licensor.

Section 10. INDEMNITY.

(a) As used in this Section, "Licensor" includes other railroad companies using the Licensor's property at or near the location of the Licensee's installation and their officers, agents, and employees; "Loss" includes loss, damage, claims, demands, actions, causes of action, penalties, costs, and expenses of whatsoever nature, including court costs and attorneys' fees, which may result from: (a) injury to or death of persons whomsoever (including the Licensor's officers, agents, and employees, the Licensee's officers, agents, and employees, as well as any other person); and/or (b) damage to or loss or destruction of property whatsoever (including Licensee's property, damage to the roadbed, tracks, equipment, or other property of the Licensor, or property in its care or custody).

(b) As a major inducement and in consideration of the license and permission herein granted, the Licensee agrees to indemnify and hold harmless the Licensor from any Loss which is due to or arises from:

1. The prosecution of any work contemplated by this Agreement including the installation, construction, maintenance, repair, renewal, modification, reconstruction, relocation, or removal of the Pipeline or any part thereof; or
2. The presence, operation, or use of the Pipeline or contents escaping therefrom,

except to the extent that the Loss is caused by the sole and direct negligence of the Licensor.

Section 11. REMOVAL OF PIPE LINE UPON TERMINATION OF AGREEMENT.

Prior to the termination of this Agreement howsoever, the Licensee shall, at Licensee's sole expense, remove the Pipeline from those portions of the property not occupied by the roadbed and track or tracks of the Licensor and shall restore, to the satisfaction of the Licensor, such portions of such property to as good a condition as they were in at the time of the construction of the Pipeline. If the Licensee fails to do the foregoing, the Licensor may do such work of removal and restoration at the cost and expense of the Licensee. The Licensor may, at its option, upon such termination, at the entire cost and expense of the Licensee, remove the portions of the Pipeline located underneath its roadbed and track or tracks and restore such roadbed to as good a condition as it was in at the time of the construction of the Pipeline, or it may permit the Licensee to do such work of removal and restoration to the satisfaction of the Licensor. In the event of the removal by the Licensor of the property of the Licensee and of the restoration of the roadbed and property as herein provided, the Licensor shall in no manner be liable to the Licensee for any damage sustained by the Licensee for or on account thereof, and such removal and restoration shall in no manner prejudice or impair any right of action for damages, or otherwise, that the Licensor may have against the Licensee.

Section 12. WAIVER OF BREACH.

The waiver by the Licensor of the breach of any condition, covenant or agreement herein contained to be kept, observed and performed by the Licensee shall in no way impair the right of the Licensor to avail itself of any remedy for any subsequent breach thereof.

Section 13. TERMINATION.

(a) If the Licensee does not use the right herein granted or the Pipeline for one (1) year, or if the Licensee continues in default in the performance of any covenant or agreement herein contained for a period of thirty (30) days after written notice from the Lessor to the Licensee specifying such default, the Lessor may, at its option, forthwith immediately terminate this Agreement by written notice.

SEE ARTICLE

VII

(b) In addition to the provisions of subparagraph (a) above, this Agreement may be terminated by written notice given by either party hereto to the other on any date in such notice stated, not less, however, than thirty (30) days subsequent to the date upon which such notice shall be given.

(c) Notice of default and notice of termination may be served personally upon the Licensee or by mailing to the last known address of the Licensee. Termination of this Agreement for any reason shall not affect any of the rights or obligations of the parties hereto which may have accrued, or liabilities, accrued or otherwise, which may have arisen prior thereto.

Section 14. AGREEMENT NOT TO BE ASSIGNED.

The Licensee shall not assign this Agreement, in whole or in part, or any rights herein granted, without the written consent of the Lessor, and it is agreed that any transfer or assignment or attempted transfer or assignment of this Agreement or any of the rights herein granted, whether voluntary, by operation of law, or otherwise, without such consent in writing, shall be absolutely void and, at the option of the Lessor, shall terminate this Agreement.

Section 15. SUCCESSORS AND ASSIGNS.

Subject to the provisions of Section 14 hereof, this Agreement shall be binding upon and inure to the benefit of the parties hereto, their heirs, executors, administrators, successors and assigns.

EXHIBIT B-1

Union Pacific Railroad Company Insurance Provisions For Pipeline / Wireline / Drainage License Agreements

Licensee shall, at its sole cost and expense, procure and maintain during the life of this Agreement the following insurance coverage:

A. **Commercial General Liability** insurance. This insurance shall contain broad form contractual liability with a single limit of at least \$2,000,000 each occurrence or claim and an aggregate limit of at least \$4,000,000. Coverage must be purchased on a post 1998 ISO or equivalent form, including but not limited to coverage for the following:

- Bodily injury including death and personal injury
- Property damage
- Fire legal liability (Not less than the replacement value of the portion of the premises occupied)
- Products and completed operations

The policy shall also contain the following endorsements which shall be indicated on the certificate of insurance:

- "For purposes of this insurance, Union Pacific Railroad payments related to the Federal Employers Liability Act or a Union Pacific Wage Continuation Program or similar programs are deemed not to be either payments made or obligations assumed under any Workers Compensation, disability benefits, or unemployment compensation law or similar law."
- The exclusions for railroads (except where the Job site is more than fifty feet (50') from any railroad including but not limited to tracks, bridges, trestles, roadbeds, terminals, underpasses or crossings), and explosion, collapse and underground hazard shall be removed.
- Coverage for Licensee's (and Lessor's) employees shall not be excluded
- Waiver of subrogation

B. **Business Automobile Coverage** insurance. This insurance shall contain a combined single limit of at least \$2,000,000 per occurrence or claim, including but not limited to coverage for the following:

- Bodily injury and property damage
- Any and all motor vehicles including owned, hired and non-owned

The policy shall also contain the following endorsements which shall be indicated on the certificate of insurance:

- "For purposes of this insurance, Union Pacific Railroad payments related to the Federal Employers Liability Act or a Union Pacific Wage Continuation Program or similar programs are deemed not to be either payments made or obligations assumed under any Workers Compensation, disability benefits, or unemployment compensation law or similar law."
- The exclusions for railroads (except where the Job site is more than fifty feet (50') from any railroad including but not limited to tracks, bridges, trestles, roadbeds, terminals, underpasses or crossings), and explosion, collapse and underground hazard shall be removed.
- Motor Carrier Act Endorsement- Hazardous materials clean up (MCS-90) if required by law.

C. **Workers Compensation and Employers Liability** insurance including but not limited to:

- Licensee's statutory liability under the workers' compensation laws of the state(s) affected by this Agreement
- Employers' Liability (Part B) with limits of at least
 - \$500,000 each accident, \$500,000 disease policy limit
 - \$500,000 each employee

If Workers Compensation insurance will not cover the liability of Licensee in states that require participation in state workers' compensation fund, Licensee shall comply with the laws of such states. If Licensee is self-insured, evidence of state approval must be provided along with evidence of excess workers compensation coverage. Coverage shall include liability arising out of the U. S. Longshoremen's and Harbor Workers' Act, the Jones Act, and the Outer Continental Shelf Land Act, if applicable.

The policy shall also contain the following endorsement which shall be indicated on the certificate of insurance:

- Alternate Employer Endorsement

D. **Umbrella or Excess Policies** In the event Licensee utilizes Umbrella or excess policies, these policies shall "follow form" and afford no less coverage than the primary policy.

Other Requirements

- E. Punitive damage exclusion must be deleted, which deletion shall be indicated on the certificate of insurance.
- F. Licensee agrees to waive its right of recovery, and its insurers, through policy endorsement, agree to waive their right of subrogation against Licensor. Licensee further waives its right of recovery, and its insurers also waive their right of subrogation against Licensor for loss of its owned or leased property or property under its care, custody and control. Licensee's insurance shall be primary with respect to any insurance carried by Licensor. All waivers of subrogation shall be indicated on the certificate of insurance.
- G. All policy(ies) required above (excluding Workers Compensation) shall provide severability of interests and shall name Licensor as an additional insured. Severability of interest and naming Licensor as additional insured shall be indicated on the certificate of insurance.
- H. Prior to commencing the Work, Licensee shall furnish to Licensor original certificate(s) of insurance evidencing the required coverage, endorsements, and amendments. The certificate(s) shall contain a provision that obligates the insurance company(ies) issuing such policy(ies) to notify Licensor in writing of any cancellation or material alteration. Upon request from Licensor, a certified duplicate original of any required policy shall be furnished.
- I. Any insurance policy shall be written by a reputable insurance company acceptable to Licensor or with a current Best's Insurance Guide Rating of A- and Class VII or better, and authorized to do business in the state(s) in which the service is to be provided.
- J. Licensee **WARRANTS** that this Agreement has been thoroughly reviewed by Licensee's insurance agent(s)/broker(s), who have been instructed by Licensee to procure the insurance coverage required by this Agreement and acknowledges that Licensee's insurance coverage will be primary.
- K. The fact that insurance is obtained by Licensee or Licensor on behalf of Licensee shall not be deemed to release or diminish the liability of Licensee, including, without limitation, liability under the indemnity provisions of this Agreement. Damages recoverable by Licensor shall not be limited by the amount of the required insurance coverage.

NEW

DOCUMENT

AUDIT 254181



Pipeline Crossing 080808
Form Approved, AVP-Law

Folder No. 2591-67

PIPELINE CROSSING AGREEMENT

Mile Post: 206.7, Fresno Subdivision
Location: Fresno, Fresno County, California

THIS AGREEMENT ("Agreement") is made and entered into as of December 31, 2009, ("Effective Date") by and between UNION PACIFIC RAILROAD COMPANY, a Delaware corporation, ("Licensor") and FRESNO METROPOLITAN FLOOD CONTROL DISTRICT, a California municipal corporation to be addressed at 5469 E Olive Avenue, Fresno, California 93727 ("Licensee").

IT IS MUTUALLY AGREED BY AND BETWEEN THE PARTIES HERETO AS FOLLOWS:

Article 1. LICENSOR GRANTS RIGHT.

In consideration of the license fee to be paid by the Licensee and in further consideration of the covenants and agreements herein contained to be by the Licensee kept, observed and performed, the Licensor hereby grants to the Licensee the right to construct and thereafter, during the term hereof, to maintain and operate ³⁵⁰
~~one 24"~~ uncased pipeline for transporting and conveying storm water only

across Licensor's track(s) and property (the "Pipeline") in the location shown and in conformity with the dimensions and specifications indicated on the print dated December 10, 2009 and marked **Exhibit A**, attached hereto and hereby made a part hereof. Under no circumstances shall Licensee modify the use of the Pipeline for a purpose other than transporting and conveying storm water, and the Pipeline shall not be used to convey any other substance, any fiber optic cable, or for any other use, whether such use is currently technologically possible, or whether such use may come into existence during the life of this Agreement.

Article 2. LICENSE FEE.

Upon execution of this Agreement, the Licensee shall pay to the Licensor a one-time License Fee of **Three Thousand One Hundred Dollars (\$3,100.00)**.

Article 3. CONSTRUCTION, MAINTENANCE AND OPERATION.

The grant of right herein made to the Licensee is subject to each and all of the terms, provisions, conditions, limitations and covenants set forth herein and in **Exhibit B**, attached hereto and hereby made a part hereof.

Article 4. DEFINITION OF LICENSEE.

For purposes of this Agreement, all references in this Agreement to the Licensee shall include the Licensee's contractors, subcontractors, officers, agents and employees, and others acting under its or their authority. If a contractor is hired by the Licensee for any work performed on the Pipeline (including initial construction and subsequent relocation or maintenance and repair work), then the Licensee shall provide a copy of this Agreement to its contractor and require its contractor to comply with all the terms and provisions hereof relating to the work to be performed. Any contractor or subcontractor shall be deemed an agent of Licensee for the purpose of this Agreement, and Licensee shall require such contractor or subcontractor to release, defend and indemnify Lessor to the same extent and under the same terms and conditions as Licensee is required to release, defend and indemnify Lessor herein.

Article 5. INSURANCE.

A. Before commencement of the term of this Agreement and prior to any Pipeline construction, the Licensee, at its sole expense, shall obtain and maintain, or cause to be obtained and maintained, the insurance required in **Exhibit C** attached hereto and hereby made a part hereof. The Licensee, at its sole expense, shall also provide to the Lessor the other insurance binders, certificates and endorsements described in **Exhibit C**, and also require that its contractor or subcontractor maintain the insurance coverages as set forth in **Exhibit C**, naming Lessor as and additional insured.

B. Not more frequently than once every two years, Lessor may reasonably modify the required insurance coverage to reflect then-current risk management practices in the railroad industry and underwriting practices in the insurance industry.

C. All insurance correspondence, binders, certificates and endorsements shall be directed to:

Union Pacific Railroad Company
Real Estate Department – Folder No. 2591-67
1400 Douglas Street STOP 1690
Omaha, NE 68179-1690

D. Failure to provide evidence as required by this section shall entitle, but not require, Lessor to terminate this License immediately. Acceptance of a certificate that does not comply with this Article shall not operate as a waiver of Licensee's obligations hereunder.

E. If the Licensee is a public entity subject to any applicable statutory tort laws, the limits of insurance described in **Exhibit C** shall be the limits the Licensee then has in effect or which is required by applicable current or subsequent law, whichever is greater, a portion of which may be self-insured with the consent and approval of Lessor.

F. The fact that insurance (including without limitation, self-insurance) is obtained by Licensee or its contractor/subcontractor shall not be deemed to release or diminish the liability of Licensee including, without limitation, liability under the indemnity provisions of this License. Damages recoverable by Lessor shall not be limited by the amount of the required insurance coverage.

Article 6. TERM.

This Agreement shall take effect as of the Effective Date first herein written and shall continue in full force and effect until terminated as herein provided.

**Article 7. SPECIAL PROVISION – RAILROAD FLAGMAN; WHEN REQUIRED;
FLAGGING CHARGES.**

A. No work of any kind shall be performed, and no person, equipment, machinery, tool(s), material(s), vehicle(s), or thing(s) shall be located, operated, placed, or stored within 25 feet of any of Railroad's track(s) at any time, for any reason, unless and until a Railroad flagman is provided to watch for trains, pursuant to the terms of the attached Exhibit 'B'. All expenses connected with the furnishing of said flagman shall be at the sole cost and expense of the Licensee, who shall promptly pay to Railroad all charges connected therewith, within 30 days after presentation of a bill therefore.

B. One and one-half times the current hourly rate is paid for overtime, Saturdays and Sundays; two and one-half times current hourly rate for holidays.

C. Wage rates are subject to change, at any time, by law or by agreement between the Railroad and its employees, and may be retroactive as a result of negotiations or a ruling of an authorized Governmental Agency. Additional charges on labor are also subject to change. If the wage rate or additional charges are changed, the Licensee shall pay on the basis of the new rates and charges.

D. Reimbursement to the Railroad will be required covering the full eight hour day during which any flagman is furnished, unless he can be assigned to other Railroad work during a portion of such day, in which event reimbursement will not be required for the portion of the day during which the flagman is engaged in other work. Reimbursement will also be required for any day not actually worked by said flagman following his assignment to work on the project for which the Railroad is required to pay the flagman and which could not reasonably be avoided by the Railroad Company by assignment of such flagman to other work, even though the Licensee may not be working during such time.

E. Arrangements for flagging are to be made at least Ten (10) days in advance of commencing work, with the Railroad Manager of Track Maintenance.

Article 8. AMENDMENT OF EXHIBIT B.

Sections 1(A), 2 (B), and (C); 5 (A) and (B); 7 (B), and 13 (A) and (B) of Exhibit B, hereto attached, are amended to read as follows:

Section 1. LIMITATION AND SUBORDINATION OF RIGHTS GRANTED

A. The Rights of the Lessor and Licensee shall be governed by the within Agreement. To the extent their rights are not defined herein (e.g., priorities of use in the servient tenement), and the parties do not otherwise agree, they shall be determined by the Court, if the Licensee condemns an easement in the property subject to this License Agreement. If the Licensee does not condemn an easement in the property subject hereto, rights not defined herein shall be as determined in Fresno County Superior Court condemnation No. 02 CE CG 02913, Fresno Metropolitan Flood Control v Union Pacific Railroad Company, which pertains to underground pipeline easement in other lands owned by Lessor.

Section 2. CONSTRUCTION, MAINTENANCE AND OPERATION

B. All work performed on property of the Lessor in connection with the design, construction, maintenance, repair, renewal, modification or reconstruction of the Pipeline shall be done to the reasonable satisfaction of the Lessor.

C. Prior to the commencement of any work in connection with the design, construction, maintenance, repair, renewal, modification, relocation, reconstruction or removal of the Pipeline where it passes underneath the roadbed and track or tracks of the Licensor, the Licensee shall submit to the Licensor plans setting out the method and manner of handling the work, including the shoring and cribbing, if any, required to protect the Licensor's operations, and shall not proceed with the work until such plans have been approved by the Licensor's Assistant Vice President Engineering Design, or his authorized representative, and then the work shall be done to the satisfaction of the Licensor's Assistant Vice President Engineering Design or his authorized representative. The Licensor shall have the right, if it so elects, to provide such support as it may deem necessary for the safety of its track or tracks during the time of construction, maintenance, repair, renewal, modification, relocation, reconstruction or removal of the Pipeline, and, in the event the Licensor provides such support, the Licensee shall pay to the Licensor, within fifteen (15) days after bills shall have been rendered therefore, all expenses incurred by the Licensor in connection therewith, which expenses shall include all assignable costs.

Section 5. REINFORCEMENT, RELOCATION OR REMOVAL OF PIPELINE

The license herein granted is subject to the needs and requirements of the Licensor in the operation of its railroad and in the improvement and use of its property, and the Licensee shall, at the sole expense of the Licensee, reinforce all or any portion of the Pipeline upon reasonable prior notice whenever, in the furtherance of its needs and requirements, the Licensor shall find such action necessary or desirable.

Section 7. PROTECTION OF FIBER OPTIC CABLE SYSTEMS

B. IN ADDITION TO OTHER INDEMNITY PROVISIONS IN THIS AGREEMENT, THE LICENSEE SHALL, AND SHALL CAUSE ITS CONTRACTOR TO, RELEASE, INDEMNIFY, DEFEND AND HOLD THE LICENSOR HARMLESS FROM AND AGAINST ALL COSTS, LIABILITY AND EXPENSE WHATSOEVER (INCLUDING, WITHOUT LIMITATION, ATTORNEYS' FEES, COURT COSTS AND EXPENSES) CAUSED BY THE NEGLIGENCE OF THE LICENSEE, ITS CONTRACTOR, AGENTS AND/OR EMPLOYEES, RESULTING IN (1) ANY DAMAGE TO OR DESTRUCTION OF ANY TELECOMMUNICATIONS SYSTEM ON LICENSOR'S PROPERTY, AND/OR (2) ANY INJURY TO OR DEATH OF ANY PERSON EMPLOYED BY OR ON BEHALF OF ANY TELECOMMUNICATIONS COMPANY, AND/OR ITS CONTRACTOR, AGENTS AND/OR EMPLOYEES, ON LICENSOR'S PROPERTY, EXCEPT IF SUCH COSTS, TO THE EXTENT LIABILITY OR EXPENSES ARE CAUSED SOLELY BY THE DIRECT ACTIVE NEGLIGENCE OF THE LICENSOR. LICENSEE FURTHER AGREES THAT IT SHALL NOT HAVE OR SEEK RECOURSE AGAINST LICENSOR FOR ANY CLAIM OR CAUSE OF ACTION FOR ALLEGED LOSS OF PROFITS OR REVENUE OR LOSS OF SERVICE OR OTHER CONSEQUENTIAL DAMAGE TO A TELECOMMUNICATION COMPANY USING LICENSOR'S PROPERTY OR A CUSTOMER OR USER OF SERVICES OF THE FIBER OPTIC CABLE ON LICENSOR'S PROPERTY.

Section 11. REMOVAL OF PIPELINE UPON TERMINATION OF AGREEMENT

Prior to the termination of this Agreement howsoever, the Licensee shall, at Licensee's sole expense, fill the Pipeline with sand/cement or slurry to the reasonable satisfaction of the Lessor. If the Licensee fails to do the foregoing, the Lessor may do such work at the cost and expense of the Licensee. In the event of such work by the Lessor, the Lessor shall in no manner be liable to the Licensee for any damage sustained by the Licensee for or on account thereof, and such work shall in no manner prejudice or impair any right of action for damages, or otherwise, that the Lessor may have against the Licensee.

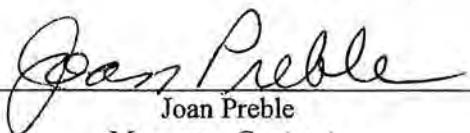
Section 13. TERMINATION

- A. If the Licensee abandons the use of the right herein granted or the Pipeline for one (1) year, or if the Licensee continues in default in the performance of any covenant or agreement herein contained for a period of thirty (30) days after written notice from the Lessor to the Licensee specifying such default, the Lessor may, at its option, forthwith immediately terminate this Agreement by written notice.
- B. Section 13(B) of Exhibit B is deleted.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date first herein written.

UNION PACIFIC RAILROAD COMPANY

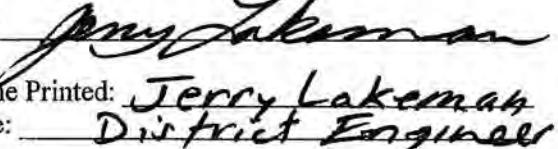
By:



Joan Preble
Manager - Contracts

**FRESNO METROPOLITAN FLOOD
CONTROL DISTRICT**

By:



Jerry Lakeman
Name Printed:
Title: District Engineer

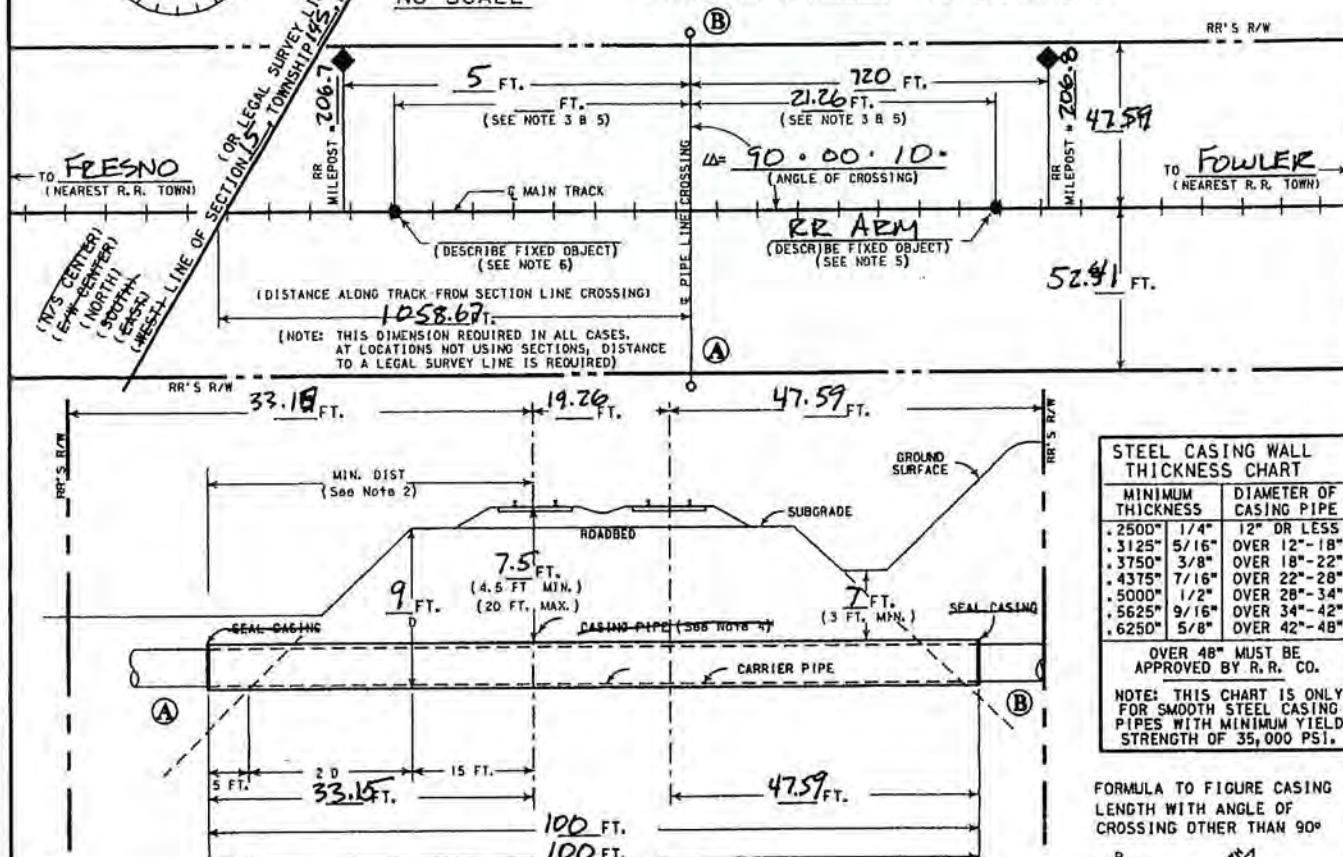
PLACE ARROW INDICATING NORTH DIRECTION RELATIVE TO CROSSING

FORM DR-0404-B
REV. 5-15-98
www.uprr.com



ENCASED NON-FLAMMABLE PIPELINE CROSSING

NOTE: ALL AVAILABLE DIMENSIONS MUST BE FILLED IN TO PROCESS THIS APPLICATION.



NOTES:
 1) ALL HORIZONTAL DISTANCES TO BE MEASURED AT RIGHT ANGLES FROM Q. OF TRACK.
 2) CASING TO EXTEND BEYOND THE Q. OF TRACK AT RIGHT ANGLES THE GREATER OF 2D + 20 FT., OR 3D FT., AND BEYOND LIMIT OF RAILROAD RIGHT-OF-WAY IF NECESSARY TO PROVIDE PROPER LENGTH OUTSIDE OF TRACK.
 3) MINIMUM OF 50' FROM THE END OF ANY RAILROAD BRIDGE, Q. OF ANY CULVERT, OR FROM ANY SWITCHING AREA.
 4) SIGNAL REPRESENTATIVE MUST BE PRESENT DURING INSTALLATION IF RAILROAD SIGNALS ARE IN THE VICINITY OF CROSSING.
 5) ALLOWABLE FIXED OBJECTS INCLUDE BACKWALLS OF BRIDGES & Q. OF ROAD CROSSINGS & OVERHEAD VIADUCTS (GIVE ROAD NAME), OR CULVERTS.
 6) CASING AND CARRIER PIPE MUST BE PLACED A MINIMUM OF 2 FEET BELOW THE EXISTING FIBER OPTIC CABLE. ANY EXCAVATION REQUIRED WITHIN 5 FEET OF THE EXISTING FIBER OPTIC CABLE MUST BE HAND DUG.

- A) IS PIPELINE CROSSING WITHIN DEDICATED STREET? YES; NO;
 B) IF YES, NAME OF STREET S. VAN NESS AVENUE
 C) DISTRIBUTION LINE OR TRANSMISSION LINE
 D) CARRIER PIPE:
 COMMODITY TO BE CONVEYED STORM WATER
 OPERATING PRESSURE 0 PSI
 WALL THICKNESS 4"; DIAMETER 36"; MATERIAL RGRCP; CL II
 E) CASING PIPE:
 WALL THICKNESS ; DIAMETER ; MATERIAL
 NOTE: CASING MUST HAVE 2" CLEARANCE BETWEEN GREATEST OUTSIDE DIAMETER OF CARRIER PIPE AND INTERIOR DIAMETER OF CASING PIPE. WHEN FURNISHING DIMENSIONS, GIVE OUTSIDE OF CARRIER PIPE AND INSIDE OF CASING PIPE.
 F) METHOD OF INSTALLING CASING PIPE UNDER TRACK(S):
 DRY BORE AND JACK (WET BORE NOT PERMITTED);
 TUNNEL; OTHER DIRECT JACK AND BORE
 G) WILL CONSTRUCTION BE BY AN OUTSIDE CONTRACTOR? YES; NO;
 H) DISTANCE FROM CENTER LINE OF TRACK TO NEAR FACE OF BORING AND JACKING PITS WHEN MEASURED AT RIGHT ANGLES TO TRACK. 30' MIN.
 I) APPLICANT HAS CONTACTED 1-800-336-9193, U.P. COMMUNICATION DEPARTMENT, AND HAS DETERMINED FIBER OPTIC CABLE DOES; DOES NOT, EXIST IN VICINITY OF WORK TO BE PERFORMED. TICKET NO. 20090514022

EXHIBIT "A"

FOR RAILROAD USE ONLY
UNION PACIFIC RAILROAD CO.

Fresno

SUBDIVISION

M. P. 206.7 E. S. 5993+701

ENCASED Storm drain CROSSING AT
Fresno Fresno CA

Fresno Mtr. Flood Control District.

APPLICANT

RR FILE NO. 2591-67 DATE 12-10-09

WARNING

IN ALL OCCASIONS, U.P. COMMUNICATIONS DEPARTMENT MUST BE CONTACTED IN ADVANCE OF ANY WORK TO DETERMINE EXISTENCE AND LOCATION OF FIBER OPTIC CABLE.
PHONE # 1-800-336-9193

EXHIBIT B SEE ARTICLE

8

INITIALS
JLJ

Section 1. LIMITATION AND SUBORDINATION OF RIGHTS GRANTED.

- A. The foregoing grant of right is subject and subordinate to the prior and continuing right and obligation of the Lessor to use and maintain its entire property including the right and power of the Lessor to construct, maintain, repair, renew, use, operate, change, modify or relocate railroad tracks, signal, communication, fiber optics, or other wirelines, pipelines and other facilities upon, along or across any or all parts of its property, all or any of which may be freely done at any time or times by the Lessor without liability to the Licensee or to any other party for compensation or damages.
- B. The foregoing grant is also subject to all outstanding superior rights (including those in favor of licensees and lessees of the Lessor's property, and others) and the right of the Lessor to renew and extend the same, and is made without covenant of title or for quiet enjoyment.

Section 2. CONSTRUCTION, MAINTENANCE AND OPERATION.

- A. The Pipeline shall be designed, constructed, operated, maintained, repaired, renewed, modified and/or reconstructed by the Licensee in strict conformity with (i) Lessor's current standards and specifications ("UP Specifications"), except for variances approved in advance in writing by the Lessor's Assistant Vice President Engineering – Design, or his authorized representative; (ii) such other additional safety standards as the Lessor, in its sole discretion, elects to require, including, without limitation, American Railway Engineering and Maintenance-of-Way Association ("AREMA") standards and guidelines (collectively, "UP Additional Requirements"), and (iii) all applicable laws, rules and regulations ("Laws"). If there is any conflict between the requirements of any Law and the UP Specifications or the UP Additional Requirements, the most restrictive will apply.
- SEE ARTICLE 8
- B. All work performed on property of the Lessor in connection with the design, construction, maintenance, repair, renewal, modification or reconstruction of the Pipeline shall be done to the satisfaction of the Lessor.
- C. Prior to the commencement of any work in connection with the design, construction, maintenance, repair, renewal, modification, relocation, reconstruction or removal of the Pipeline from Lessor's property, the Licensee shall submit to the Lessor plans setting out the method and manner of handling the work, including the shoring and cribbing, if any, required to protect the Lessor's operations, and shall not proceed with the work until such plans have been approved by the Lessor's Assistant Vice President Engineering Design, or his authorized representative, and then the work shall be done to the satisfaction of the Lessor's Assistant Vice President Engineering Design or his authorized representative. The Lessor shall have the right, if it so elects, to provide such support as it may deem necessary for the safety of its track or tracks during the time of construction, maintenance, repair, renewal, modification, relocation, reconstruction or removal of the Pipeline, and, in the event the Lessor provides such support, the Licensee shall pay to the Lessor, within fifteen (15) days after bills shall have been rendered therefore, all expenses incurred by the Lessor in connection therewith, which expenses shall include all assignable costs.

- D. The Licensee shall keep and maintain the soil over the Pipeline thoroughly compacted and the grade even with the adjacent surface of the ground.
- E. In the prosecution of any work covered by this Agreement, Licensee shall secure any and all necessary permits and shall comply with all applicable federal, state and local laws, regulations and enactments affecting the work including, without limitation, all applicable Federal Railroad Administration regulations.

Section 3. NOTICE OF COMMENCEMENT OF WORK / LICENSOR REPRESENTATIVE / SUPERVISION / FLAGGING / SAFETY.

- A. If an emergency should arise requiring immediate attention, the Licensee shall provide as much notice as practicable to Lessor before commencing any work. In all other situations, the Licensee shall notify the Lessor at least ten (10) days (or such other time as the Lessor may allow) in advance of the commencement of any work upon property of the Lessor in connection with the construction, maintenance, repair, renewal, modification, reconstruction, relocation or removal of the Pipeline. All such work shall be prosecuted diligently to completion. The Licensee will coordinate its initial, and any subsequent work with the following employee of Lessor or his or her duly authorized representative (hereinafter "Lessor Representative" or "Railroad Representative"):

**JOSHUA ROBINSON, MTM
UNION PACIFIC RAILROAD**
515-708-0439
515-943-0438

- B. Licensee, at its own expense, shall adequately police and supervise all work to be performed. The responsibility of Licensee for safe conduct and adequate policing and supervision of work shall not be lessened or otherwise affected by Lessor's approval of plans and specifications involving the work, or by Lessor's collaboration in performance of any work, or by the presence at the work site of a Lessor Representative, or by compliance by Licensee with any requests or recommendations made by the Lessor Representative.
- C. At the request of Lessor, Licensee shall remove from Lessor's property any employee who fails to conform to the instructions of the Lessor Representative in connection with the work on Lessor's property. Licensee shall indemnify Lessor against any claims arising from the removal of any such employee from Lessor's property.
- D. Licensee shall notify the Lessor Representative at least ten (10) working days in advance of proposed performance of any work in which any person or equipment will be within twenty-five (25) feet of any track, or will be near enough to any track that any equipment extension (such as, but not limited to, a crane boom) will reach to within twenty-five (25) feet of any track. No work of any kind shall be performed, and no person, equipment, machinery, tool(s), material(s), vehicle(s), or thing(s) shall be located, operated, placed, or stored within twenty-five (25) feet of any of Lessor's track(s) at any time, for any reason, unless and until a railroad flagman is provided to watch for trains. Upon receipt of such ten (10) day notice, the Lessor Representative will determine and inform Lessor whether a flagman need be present and whether any special protective or safety measures need to be implemented. If flagging or other special protective or safety measures are performed by Lessor, Lessor will bill Licensee for

such expenses incurred by Licensor, unless Licensor and a federal, state or local governmental entity have agreed that Licensor is to bill such expenses to the federal, state or local governmental entity. If Licensor will be sending the bills to Licensee, Licensee shall pay such bills within thirty (30) days of receipt of billing. If Licensor performs any flagging, or other special protective or safety measures are performed by Licensor, Licensee agrees that Licensee is not relieved of any of responsibilities or liabilities set forth in this Agreement.

- E. The rate of pay per hour for each flagman will be the prevailing hourly rate in effect for an eight-hour day for the class of flagmen used during regularly assigned hours and overtime in accordance with Labor Agreements and Schedules in effect at the time the work is performed. In addition to the cost of such labor, a composite charge for vacation, holiday, health and welfare, supplemental sickness, Railroad Retirement and unemployment compensation, supplemental pension, Employees Liability and Property Damage and Administration will be included, computed on actual payroll. The composite charge will be the prevailing composite charge in effect at the time the work is performed. One and one-half times the current hourly rate is paid for overtime, Saturdays and Sundays, and two and one-half times current hourly rate for holidays. Wage rates are subject to change, at any time, by law or by agreement between Licensor and its employees, and may be retroactive as a result of negotiations or a ruling of an authorized governmental agency. Additional charges on labor are also subject to change. If the wage rate or additional charges are changed, Licensee (or the governmental entity, as applicable) shall pay on the basis of the new rates and charges.
- F. Reimbursement to Licensor will be required covering the full eight-hour day during which any flagman is furnished, unless the flagman can be assigned to other railroad work during a portion of such day, in which event reimbursement will not be required for the portion of the day during which the flagman is engaged in other railroad work. Reimbursement will also be required for any day not actually worked by the flagman following the flagman's assignment to work on the project for which Licensor is required to pay the flagman and which could not reasonably be avoided by Licensor by assignment of such flagman to other work, even though Licensee may not be working during such time. When it becomes necessary for Licensor to bulletin and assign an employee to a flagging position in compliance with union collective bargaining agreements, Licensee must provide Licensor a minimum of five (5) days notice prior to the cessation of the need for a flagman. If five (5) days notice of cessation is not given, Licensee will still be required to pay flagging charges for the five (5) day notice period required by union agreement to be given to the employee, even though flagging is not required for that period. An additional ten (10) days notice must then be given to Licensor if flagging services are needed again after such five day cessation notice has been given to Licensor.
- G. Safety of personnel, property, rail operations and the public is of paramount importance in the prosecution of the work performed by Licensee or its contractor. Licensee shall be responsible for initiating, maintaining and supervising all safety, operations and programs in connection with the work. Licensee and its contractor shall at a minimum comply with Licensor's safety standards listed in **Exhibit D**, hereto attached, to ensure uniformity with the safety standards followed by Licensor's own forces. As a part of Licensee's safety responsibilities, Licensee shall notify Licensor if it determines that any of Licensor's safety standards are contrary to good safety practices. Licensee and its contractor shall furnish copies of **Exhibit D** to each of its employees before they enter the job site.
- H. Without limitation of the provisions of paragraph G above, Licensee shall keep the job site free from safety and health hazards and ensure that their employees are competent and adequately trained in all safety and health aspects of the job.

- I. Licensee shall have proper first aid supplies available on the job site so that prompt first aid services may be provided to any person injured on the job site. Prompt notification shall be given to Lessor of any U.S. Occupational Safety and Health Administration reportable injuries. Licensee shall have a non-delegable duty to control its employees while they are on the job site or any other property of Lessor, and to be certain they do not use, be under the influence of, or have in their possession any alcoholic beverage, drug or other substance that may inhibit the safe performance of any work.
- J. If and when requested by Lessor, Licensee shall deliver to Lessor a copy of its safety plan for conducting the work (the "Safety Plan"). Lessor shall have the right, but not the obligation, to require Licensee to correct any deficiencies in the Safety Plan. The terms of this Agreement shall control if there are any inconsistencies between this Agreement and the Safety Plan.

Section 4. LICENSEE TO BEAR ENTIRE EXPENSE.

The Licensee shall bear the entire cost and expense incurred in connection with the design, construction, maintenance, repair and renewal and any and all modification, revision, relocation, removal or reconstruction of the Pipeline, including any and all expense which may be incurred by the Lessor in connection therewith for supervision, inspection, flagging, or otherwise.

Section 5. REINFORCEMENT, RELOCATION OR REMOVAL OF PIPELINE.

SEE ARTICLE 8

- A. The license herein granted is subject to the needs and requirements of the Lessor in the safe and efficient operation of its railroad and in the improvement and use of its property. The Licensee shall, at the sole expense of the Licensee, reinforce or otherwise modify the Pipeline, or move all or any portion of the Pipeline to such new location, or remove the Pipeline from the Lessor's property, as the Lessor may designate, whenever, in the furtherance of its needs and requirements, the Lessor, at its sole election, finds such action necessary or desirable.
- B. All the terms, conditions and stipulations herein expressed with reference to the Pipeline on property of the Lessor in the location hereinbefore described shall, so far as the Pipeline remains on the property, apply to the Pipeline as modified, changed or relocated within the contemplation of this section.

Section 6. NO INTERFERENCE WITH LESSOR'S OPERATION.

- A. The Pipeline and all parts thereof within and outside of the limits of the property of the Lessor shall be designed, constructed and, at all times, maintained, repaired, renewed and operated in such manner as to cause no interference whatsoever with the constant, continuous and uninterrupted use of the tracks, property and facilities of the Lessor and nothing shall be done or suffered to be done by the Licensee at any time that would in any manner impair the safety thereof.
- B. Explosives or other highly flammable substances shall not be stored on Lessor's property without the prior written approval of Lessor.
- C. No additional vehicular crossings (including temporary haul roads) or pedestrian crossings over Lessor's trackage shall be installed or used by Lessor or its contractors without the prior written permission of Lessor.

- D. When not in use, any machinery and materials of Licensee or its contractors shall be kept at least fifty (50) feet from the centerline of Lessor's nearest track.
- E. Operations of Lessor and work performed by Lessor's personnel may cause delays in the work to be performed by Licensee. Licensee accepts this risk and agrees that Lessor shall have no liability to Licensee or any other person or entity for any such delays. Licensee shall coordinate its activities with those of Lessor and third parties so as to avoid interference with railroad operations. The safe operation of Lessor's train movements and other activities by Lessor take precedence over any work to be performed by Licensee.

Section 7. PROTECTION OF FIBER OPTIC CABLE SYSTEMS.

- A. Fiber optic cable systems may be buried on the Lessor's property. Protection of the fiber optic cable systems is of extreme importance since any break could disrupt service to users resulting in business interruption and loss of revenue and profits. Licensee shall telephone the Lessor during normal business hours (7:00 a.m. to 9:00 p.m. Central Time, Monday through Friday, except for holidays) at 1-800-336-9193 (also a 24-hour, 7-day number for emergency calls) to determine if fiber optic cable is buried anywhere on the Lessor's premises to be used by the Licensee. If it is, Licensee will telephone the telecommunications company(ies) involved, arrange for a cable locator, make arrangements for relocation or other protection of the fiber optic cable, all at Licensee's expense, and will commence no work on the Lessor's property until all such protection or relocation has been accomplished. Licensee shall indemnify and hold the Lessor harmless from and against all costs, liability and expense whatsoever (including, without limitation, attorneys' fees, court costs and expenses) arising out of or caused in any way by Licensee's failure to comply with the provisions of this paragraph.
SEE ARTICLE 8
- ~~B. IN ADDITION TO OTHER INDEMNITY PROVISIONS IN THIS AGREEMENT, THE LICENSEE SHALL, AND SHALL CAUSE ITS CONTRACTOR TO, RELEASE, INDEMNIFY, DEFEND AND HOLD THE LESSOR HARMLESS FROM AND AGAINST ALL COSTS, LIABILITY AND EXPENSE WHATSOEVER (INCLUDING, WITHOUT LIMITATION, ATTORNEYS' FEES, COURT COSTS AND EXPENSES) CAUSED BY THE NEGLIGENCE OF THE LICENSEE, ITS CONTRACTOR, AGENTS AND/OR EMPLOYEES, RESULTING IN (1) ANY DAMAGE TO OR DESTRUCTION OF ANY TELECOMMUNICATIONS SYSTEM ON LESSOR'S PROPERTY, AND/OR (2) ANY INJURY TO OR DEATH OF ANY PERSON EMPLOYED BY OR ON BEHALF OF ANY TELECOMMUNICATIONS COMPANY, AND/OR ITS CONTRACTOR, AGENTS AND/OR EMPLOYEES, ON LESSOR'S PROPERTY, EXCEPT IF SUCH COSTS, LIABILITY OR EXPENSES ARE CAUSED SOLELY BY THE DIRECT ACTIVE NEGLIGENCE OF THE LESSOR. LICENSEE FURTHER AGREES THAT IT SHALL NOT HAVE OR SEEK RECOURSE AGAINST LESSOR FOR ANY CLAIM OR CAUSE OF ACTION FOR ALLEGED LOSS OF PROFITS OR REVENUE OR LOSS OF SERVICE OR OTHER CONSEQUENTIAL DAMAGE TO A TELECOMMUNICATION COMPANY USING LESSOR'S PROPERTY OR A CUSTOMER OR USER OF SERVICES OF THE FIBER OPTIC CABLE ON LESSOR'S PROPERTY.~~**

Section 8. CLAIMS AND LIENS FOR LABOR AND MATERIAL; TAXES.

- A. The Licensee shall fully pay for all materials joined or affixed to and labor performed upon property of the Lessor in connection with the construction, maintenance, repair, renewal, modification or reconstruction of the Pipeline, and shall not permit or suffer any mechanic's or materialman's lien of any kind or nature to be enforced against the property for any work done or materials furnished thereon at the instance or request or on behalf of the Licensee. The Licensee shall indemnify and hold harmless the Lessor against and from any and all liens, claims, demands, costs and expenses of whatsoever nature in any way connected with or growing out of such work done, labor performed, or materials furnished.
- B. The Licensee shall promptly pay or discharge all taxes, charges and assessments levied upon, in respect to, or on account of the Pipeline, to prevent the same from becoming a charge or lien upon property of the Lessor, and so that the taxes, charges and assessments levied upon or in respect to such property shall not be increased because of the location, construction or maintenance of the Pipeline or any improvement, appliance or fixture connected therewith placed upon such property, or on account of the Licensee's interest therein. Where such tax, charge or assessment may not be separately made or assessed to the Licensee but shall be included in the assessment of the property of the Lessor, then the Licensee shall pay to the Lessor an equitable proportion of such taxes determined by the value of the Licensee's property upon property of the Lessor as compared with the entire value of such property.

Section 9. RESTORATION OF LESSOR'S PROPERTY.

In the event the Licensee in any manner moves or disturbs any of the property of the Lessor in connection with the construction, maintenance, repair, renewal, modification, reconstruction, relocation or removal of the Pipeline, then in that event the Licensee shall, as soon as possible and at Licensee's sole expense, restore such property to the same condition as the same were before such property was moved or disturbed, and the Licensee shall indemnify and hold harmless the Lessor, its officers, agents and employees, against and from any and all liability, loss, damages, claims, demands, costs and expenses of whatsoever nature, including court costs and attorneys' fees, which may result from injury to or death of persons whomsoever, or damage to or loss or destruction of property whatsoever, when such injury, death, damage, loss or destruction grows out of or arises from the moving or disturbance of any other property of the Lessor.

Section 10. INDEMNITY.

- A. As used in this Section, "Lessor" includes other railroad companies using the Lessor's property at or near the location of the Licensee's installation and their officers, agents, and employees; "Loss" includes loss, damage, claims, demands, actions, causes of action, penalties, costs, and expenses of whatsoever nature, including court costs and attorneys' fees, which may result from: (a) injury to or death of persons whomsoever (including the Lessor's officers, agents, and employees, the Licensee's officers, agents, and employees, as well as any other person); and/or (b) damage to or loss or destruction of property whatsoever (including Licensee's property, damage to the roadbed, tracks, equipment, or other property of the Lessor, or property in its care or custody).

B. AS A MAJOR INDUCEMENT AND IN CONSIDERATION OF THE LICENSE AND PERMISSION HEREIN GRANTED, TO THE FULLEST EXTENT PERMITTED BY LAW, THE LICENSEE SHALL, AND SHALL CAUSE ITS CONTRACTOR TO, RELEASE, INDEMNIFY, DEFEND AND HOLD HARMLESS THE LICENSOR FROM ANY LOSS WHICH IS DUE TO OR ARISES FROM:

1. THE PROSECUTION OF ANY WORK CONTEMPLATED BY THIS AGREEMENT INCLUDING THE INSTALLATION, CONSTRUCTION, MAINTENANCE, REPAIR, RENEWAL, MODIFICATION, RECONSTRUCTION, RELOCATION, OR REMOVAL OF THE PIPELINE OR ANY PART THEREOF;
2. ANY RIGHTS OR INTERESTS GRANTED PURSUANT TO THIS LICENSE;
3. THE PRESENCE, OPERATION, OR USE OF THE PIPELINE OR CONTENTS ESCAPING THEREFROM;
4. THE ENVIRONMENTAL STATUS OF THE PROPERTY CAUSED BY OR CONTRIBUTED TO BY LICENSEE;
5. ANY ACT OR OMISSION OF LICENSEE OR LICENSEE'S OFFICERS, AGENTS, INVITEES, EMPLOYEES, OR CONTRACTORS OR ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY ANY OF THEM, OR ANYONE THEY CONTROL OR EXERCISE CONTROL OVER; OR
6. LICENSEE'S BREACH OF THIS AGREEMENT, EXCEPT WHERE THE LOSS IS CAUSED BY THE SOLE DIRECT AND ACTIVE NEGLIGENCE OF THE LICENSOR, AS DETERMINED IN A FINAL JUDGMENT BY A COURT OF COMPETENT JURISDICTION, IT BEING THE INTENTION OF THE PARTIES THAT THE ABOVE INDEMNITY WILL OTHERWISE APPLY TO LOSSES CAUSED BY OR ARISING FROM, IN WHOLE OR IN PART, LICENSOR'S NEGLIGENCE.

C. Upon written notice from Licensor, Licensee agrees to assume the defense of any lawsuit of proceeding brought against any indemnitee by any entity, relating to any matter covered by this License for which Licensee has an obligation to assume liability for and/or save and hold harmless any indemnitee. Licensee shall pay all costs incident to such defense, including, but not limited to, reasonable attorney's fees, investigators' fees, litigation and appeal expenses, settlement payments and amounts paid in satisfaction of judgments.

Section 11. REMOVAL OF PIPELINE ~~AND~~ TERMINATION OF AGREEMENT.

Prior to the termination of this Agreement howsoever, the Licensee shall, at Licensee's sole expense, remove the Pipeline from those portions of the property not occupied by the roadbed and track or tracks of the Licensor and shall restore, to the satisfaction of the Licensor, such portions of such property to as good a condition as they were in at the time of the construction of the Pipeline. If the Licensee fails to do the foregoing, the Licensor may, but is not obligated, to perform such work of removal and restoration at the cost and expense of the Licensee. In the event of the removal by the Licensor of the property of the Licensee and of the restoration of the roadbed and property as herein provided, the Licensor shall in no manner be liable to the Licensee for any damage sustained by the Licensee for or on account thereof, and such removal and restoration shall in no manner prejudice or impair any right of action for damages, or otherwise, that the Licensor may have against the Licensee.

Section 12. WAIVER OF BREACH.

The waiver by the Licensor of the breach of any condition, covenant or agreement herein contained to be kept, observed and performed by the Licensee shall in no way impair the right of the Licensor to avail itself of any remedy for any subsequent breach thereof.

Section 13. TERMINATION.

SEE ARTICLE

8



- A. ~~If the Licensee does not use the right herein granted or the Pipeline for one (1) year, or if the Licensee continues in default in the performance of any covenant or agreement herein contained for a period of thirty (30) days after written notice from the Licensor to the Licensee specifying such default, the Licensor may, at its option, forthwith immediately terminate this Agreement by written notice.~~
- B. ~~In addition to the provisions of subparagraph (a) above, this Agreement may be terminated by written notice given by either party hereto to the other on any date in such notice stated, not less than thirty (30) days subsequent to the date upon which such notice shall be given.~~
- C. Notice of default and notice of termination may be served personally upon the Licensee or by mailing to the last known address of the Licensee. Termination of this Agreement for any reason shall not affect any of the rights or obligations of the parties hereto which may have accrued, or liabilities, accrued or otherwise, which may have arisen prior thereto.

Section 14. AGREEMENT NOT TO BE ASSIGNED.

The Licensee shall not assign this Agreement, in whole or in part, or any rights herein granted, without the written consent of the Licensor, and it is agreed that any transfer or assignment or attempted transfer or assignment of this Agreement or any of the rights herein granted, whether voluntary, by operation of law, or otherwise, without such consent in writing, shall be absolutely void and, at the option of the Licensor, shall terminate this Agreement.

Section 15. SUCCESSORS AND ASSIGNS.

Subject to the provisions of Section 14 hereof, this Agreement shall be binding upon and inure to the benefit of the parties hereto, their heirs, executors, administrators, successors and assigns.

Section 16. SEVERABILITY.

Any provision of this Agreement which is determined by a court of competent jurisdiction to be invalid or unenforceable shall be invalid or unenforceable only to the extent of such determination, which shall not invalidate or otherwise render ineffective any other provision of this Agreement.

EXHIBIT C

Union Pacific Railroad Company
Insurance Exhibit

PART 1: GENERAL INSTRUCTIONS AND REQUIREMENTS:

Prior to execution of this License, Licensee shall furnish Railroad with a certificate(s) of insurance, executed by a duly authorized representative of each insurer, showing compliance with all insurance required by this License.

All certificates of insurance and correspondence shall be addressed and sent to:

Union Pacific Railroad Company
Real Estate Department – Folder No.: 2591-67
1400 Douglas St., STOP 1690
Omaha, NE 68179-1690

All insurance policies must be written by a reputable insurance company acceptable to Railroad or with a current Best's Insurance Guide Rating of A- and Class VII or better, and authorized to do business in the state(s) in which the work is to be performed.

All policies required by this License shall provide coverage for punitive damages unless (a) insurance coverage may not lawfully be obtained for any punitive damages that may arise under this License, or (d) all punitive damages are prohibited by all states in which this License will be performed.

The fact that insurance is obtained by Licensee will not be deemed to release or diminish the liability of Licensee, including, without limitation, liability under the indemnity provisions of this License. Damages recoverable by Railroad from Licensee or any third party will not be limited by the amount of the required insurance coverage.

PART 2: SPECIFIC INSURANCE LIMITS AND REQUIREMENTS

Licensee shall, at its sole cost and expense, procure and maintain during the life of this License (except as otherwise provided in this License) the following insurance coverage:

A. Commercial General Liability Insurance written on ISO Occurrence form CG 00 01 12 04 (or a substitute form providing equivalent coverage) with limits of not less than:

- \$2,000,000 Each Occurrence
- \$4,000,000 Aggregate

This policy must also contain the following endorsements (which must be stated on the certificate of insurance):

- **Additional Insured Endorsement** ISO Form CG 20 26 (or a substitute form providing equivalent coverage).

The coverage provided to Railroad as additional insured shall, to the extent provided under ISO Additional Insured Endorsement Form CG 20 26, provide coverage for Railroad's negligence

whether sole or partial, active or passive, and shall not be limited by Licensee's liability under the indemnity provisions of this License.

- **Contractual Liability - Railroads** ISO Form 24 17 10 01 (or a substitute form providing equivalent coverage) showing "Union Pacific Railroad Company Property" covered by this License as the "Designated Job Site".

B. Business Automobile Liability Insurance written on ISO Form CA 00 01 10 01 (or a substitute form providing equivalent coverage) with a limit of:

- \$2,000,000 each accident.

This policy must contain the following endorsements (which must be stated on the Certificate of Insurance):

- **Designated Insured** ISO Form CA 20 48 02 99 (or a substitute form providing equivalent coverage).
- **Coverage for Certain Operations in Connection with Railroads** ISO Form CA 20 70 10 01 showing "Union Pacific Railroad Property" covered by this License as the "Designated Job Site".
- **Motor Carriers Act Endorsement** OMB Form MCS-90 (if required by law).

C. Workers Compensation Insurance. Coverage must include but not be limited to:

- Licensee's statutory liability under the workers' compensation laws of the state(s) affected by this License. Employers' Liability (Part B) with limits of at least \$500,000 each accident, \$500,000 disease policy limit \$500,000 each employee.
- If Licensee is self-insured, evidence of state approval and excess workers compensation coverage must be provided.
- Licensee shall waive all rights of recovery, and its insurers also waive all rights of subrogation of damages against Railroad and its agents, officers, directors and employees for damages covered by the workers compensation and employers liability obtained by Licensee required in this License. **This waiver must be stated on the certificate of insurance.**

D. Umbrella or excess liability Insurance. If Licensee utilizes umbrella or excess policies to meet limit requirements, these policies must "follow form" and afford no less coverage than the primary policy. If utilized, Licensee shall waive all rights of recovery, and its insurers also waive all rights of subrogation of damages against Railroad and its agents, officers, directors and employees for damages covered by Umbrella or Excess Liability obtained by Licensee required in this License. **This waiver must be stated on the certificate of insurance.**

E. Railroad Protective Liability Insurance. At all times during construction, installation, repair or removal of a pipeline or wire line Licensee or its Contractor must obtain and maintain Railroad Protective Liability insurance written on ISO occurrence form CG 00 35 12 04 (or a substitute form providing equivalent coverage) on behalf of Railroad as named insured, with a limit of not less than \$2,000,000 per occurrence and an aggregate of \$6,000,000. **A binder stating the policy is in place must be submitted to Railroad before the work may be commenced** and until the original policy is forwarded to Railroad.

EXHIBIT D
SAFETY STANDARDS

MINIMUM SAFETY REQUIREMENTS

The term "employees" as used herein refer to all employees of Licensee or its contractors, subcontractors, or agents, as well as any subcontractor or agent of any Licensee.

I. Clothing

- A. All employees of Licensee will be suitably dressed to perform their duties safely and in a manner that will not interfere with their vision, hearing, or free use of their hands or feet.

Specifically, Licensee's employees must wear:

- (i) Waist-length shirts with sleeves.
- (ii) Trousers that cover the entire leg. If flare-legged trousers are worn, the trouser bottoms must be tied to prevent catching.
- (iii) Footwear that covers their ankles and has a defined heel. Employees working on bridges are required to wear safety-toed footwear that conforms to the American National Standards Institute (ANSI) and FRA footwear requirements.

- B. Employees shall not wear boots (other than work boots), sandals, canvas-type shoes, or other shoes that have thin soles or heels that are higher than normal.

- C. Employees must not wear loose or ragged clothing, neckties, finger rings, or other loose jewelry while operating or working on machinery.

II. Personal Protective Equipment

Licensee shall require its employee to wear personal protective equipment as specified by Railroad rules, regulations, or recommended or requested by the Railroad Representative.

- (i) Hard hat that meets the American National Standard (ANSI) Z89.1 – latest revision. Hard hats should be affixed with Licensee's company logo or name.
- (ii) Eye protection that meets American National Standard (ANSI) for occupational and educational eye and face protection, Z87.1 – latest revision. Additional eye protection must be provided to meet specific job situations such as welding, grinding, etc.
- (iii) Hearing protection, which affords enough attenuation to give protection from noise levels that will be occurring on the job site. Hearing protection, in the form of plugs or muffs, must be worn when employees are within:
 - 100 feet of a locomotive or roadway/work equipment
 - 15 feet of power operated tools
 - 150 feet of jet blowers or pile drivers

- 150 feet of retarders in use (when within 10 feet, employees must wear dual ear protection – plugs and muffs)
- (iv) Other types of personal protective equipment, such as respirators, fall protection equipment, and face shields, must be worn as recommended or requested by the Railroad Representative.

III. On Track Safety

Licensee is responsible for compliance with the Federal Railroad Administration's Roadway Worker Protection regulations – 49CFR214, Subpart C and Railroad's On-Track Safety rules. Under 49CFR214, Subpart C, railroad contractors are responsible for the training of their employees on such regulations. In addition to the instructions contained in Roadway Worker Protection regulations, all employees must:

- (i) Maintain a minimum distance of at least twenty-five (25) feet to any track unless the Railroad Representative is present to authorize movements.
- (ii) Wear an orange, reflectorized work wear approved by the Railroad Representative.
- (iii) Participate in a job briefing that will specify the type of On-Track Safety for the type of work being performed. Licensee must take special note of limits of track authority, which tracks may or may not be fouled, and clearing the track. Licensee will also receive special instructions relating to the work zone around machines and minimum distances between machines while working or traveling.

IV. Equipment

- A. It is the responsibility of Licensee to ensure that all equipment is in a safe condition to operate. If, in the opinion of the Railroad Representative, any of Licensee's equipment is unsafe for use, Licensee shall remove such equipment from Railroad's property. In addition, Licensee must ensure that the operators of all equipment are properly trained and competent in the safe operation of the equipment. In addition, operators must be:
 - Familiar and comply with Railroad's rules on lockout/tagout of equipment.
 - Trained in and comply with the applicable operating rules if operating any hy-rail equipment on-track.
 - Trained in and comply with the applicable air brake rules if operating any equipment that moves rail cars or any other rail bound equipment.
- B. All self-propelled equipment must be equipped with a first-aid kit, fire extinguisher, and audible back-up warning device.
- C. Unless otherwise authorized by the Railroad Representative, all equipment must be parked a minimum of twenty-five (25) feet from any track. Before leaving any equipment unattended, the operator must stop the engine and properly secure the equipment against movement.
- D. Cranes must be equipped with three orange cones that will be used to mark the working area of the crane and the minimum clearances to overhead powerlines.

V. General Safety Requirements

- A. Licensee shall ensure that all waste is properly disposed of in accordance with applicable federal and state regulations.
- B. Licensee shall ensure that all employees participate in and comply with a job briefing conducted by the Railroad Representative, if applicable. During this briefing, the Railroad Representative will specify safe work procedures, (including On-Track Safety) and the potential hazards of the job. If any employee has any questions or concerns about the work, the employee must voice them during the job briefing. Additional job briefings will be conducted during the work as conditions, work procedures, or personnel change.
- C. All track work performed by Licensee meets the minimum safety requirements established by the Federal Railroad Administration's Track Safety Standards 49CFR213.
- D. All employees comply with the following safety procedures when working around any railroad track:
 - (i) Always be on the alert for moving equipment. Employees must always expect movement on any track, at any time, in either direction.
 - (ii) Do not step or walk on the top of the rail, frog, switches, guard rails, or other track components.
 - (iii) In passing around the ends of standing cars, engines, roadway machines or work equipment, leave at least 20 feet between yourself and the end of the equipment. Do not go between pieces of equipment if the opening is less than one car length (50 feet).
 - (iv) Avoid walking or standing on a track unless so authorized by the employee in charge.
 - (v) Before stepping over or crossing tracks, look in both directions first.
 - (vi) Do not sit on, lie under, or cross between cars except as required in the performance of your duties and only when track and equipment have been protected against movement.
- E. All employees must comply with all federal and state regulations concerning workplace safety.

NEW

DOCUMENT



Form Approved, AVP-Law
07/25/06

Folder No. 2459-16

PIPELINE CROSSING AGREEMENT

Mile Post: 206.8, Fresno Subdivision
Location: Fresno, Fresno County, California

THIS AGREEMENT ("Agreement") is made and entered into as of April 09, 2008, ("Effective Date") by and between UNION PACIFIC RAILROAD COMPANY, a Delaware corporation, ("Licensor") and FRESNO METROPOLITAN FLOOD CONTROL DISTRICT, a California corporation to be addressed at 5469 E Olive Avenue, Fresno, California 93727 ("Licensee").

IT IS MUTUALLY AGREED BY AND BETWEEN THE PARTIES HERETO AS FOLLOWS:

Article 1. LICENSE FEE.

Upon execution of this Agreement, the Licensee shall pay to the Licensor a one-time License Fee of **Four Thousand Five Hundred Dollars (\$4,500.00)**.

Article 2. LICENSOR GRANTS RIGHT.

In consideration of the license fee to be paid by the Licensee and in further consideration of the covenants and agreements herein contained to be by the Licensee kept, observed and performed, the Licensor hereby grants to the Licensee the right to construct and thereafter, during the term hereof, to maintain and operate one 30" uncased pipeline for transporting and conveying storm water across Licensor's track(s) and property (the "Pipeline") in the location shown and in conformity with the dimensions and specifications indicated on the print dated April 03, 2008 and marked **Exhibit A**, attached hereto and hereby made a part hereof. Under no circumstances shall Licensee modify the use of the Pipeline for a purpose other than transporting and conveying storm water, and the Pipeline shall not be used to convey any other substance, any fiber optic cable, or for any other use, whether such use is currently technologically possible, or whether such use may come into existence during the life of this Agreement.

Article 3. CONSTRUCTION, MAINTENANCE AND OPERATION.

The grant of right herein made to the Licensee is subject to each and all of the terms, provisions, conditions, limitations and covenants set forth herein and in Exhibit B, attached hereto and hereby made a part hereof.



Article 4. IF WORK IS TO BE PERFORMED BY CONTRACTOR.

If a contractor is hired by the Licensee to do any of the work performed on the Pipeline (including initial construction and subsequent relocation or maintenance and repair work), then the Licensee shall require its contractor to execute the Licensor's current form of Contractor's Right of Entry Agreement. Licensee acknowledges receipt of a copy of the Contractor's Right of Entry Agreement and an understanding of its terms, provisions, and requirements, and will inform its contractor of the need to execute the agreement. Under no circumstances will Licensee's contractor be allowed onto Licensor's property without first executing the Contractor's Right of Entry Agreement and the contractor providing to the Licensor the insurance binders, certificates and endorsements described in the Contractor's Right of Entry Agreement.

Article 5. INSURANCE.

A. Before commencement of the term of this Agreement and prior to any Pipeline construction, the Licensee, at its sole expense, shall provide to the Licensor the insurance binders, certificates and endorsements described in **Exhibit C**, attached hereto and hereby made a part hereof. *The Licensee or it's contractor, whichever entity will be performing the Pipeline construction, will need to procure a Railroad Protective Liability Insurance policy for the duration of such work, as described in Exhibit C.*

B. Not more frequently than once every two years, Licensor may reasonably modify the required insurance coverage to reflect then-current risk management practices in the railroad industry and underwriting practices in the insurance industry.

C. All insurance correspondence shall be directed to:

Joan M. Preble
Folder No. 2459-16
Union Pacific Railroad Company
Real Estate Department
1400 Douglas Street STOP 1690
Omaha, NE 68179-1690

D. If the Licensee is a public entity subject to any applicable statutory tort laws, the limits of insurance described in **Exhibit C** shall be the limits the Licensee then has in effect or which is required by applicable current or subsequent law, whichever is greater, a portion of which may be self-insured with the consent and approval of Licensor.

Article 6. TERM.

This Agreement shall take effect as of the Effective Date first herein written and shall continue in full force and effect until terminated as herein provided.



Article 7. SPECIAL PROVISIONS

A Railroad inspector is required to monitor the ground and track for movement during the jacking process. The installation process and all train movement must be immediately stopped if any movement is detected. The damaged area must be immediately repaired. The installation process must be reviewed and modified as required before the installation may proceed. Licensee must pay inspector's expense and the cost of any required repairs.

Article 8. AMENDMENT OF EXHIBIT B

Sections 1(A), 2(B) and (C), 5(A) and (B), 7(B), 11 and 13(A) and (B) of attached Exhibit B, hereto attached, are amended to read as follows:

Section 1. LIMITATION AND SUBORDINATION OF RIGHTS GRANTED

A. The Rights of the Lessor and Licensee shall be governed by the within Agreement. To the extent their rights are not defined herein (e.g., priorities of use in the servient tenement), and the parties do not otherwise agree, they shall be determined by the Court, if the Licensee condemns an easement in the property subject to this License Agreement. If the Licensee does not condemn an easement in the property subject hereto, rights not defined herein shall be as determined in Fresno County Superior Court condemnation No. 02 CE CG 02913, Fresno Metropolitan Flood Control v Union Pacific Railroad Company, which pertains to underground pipeline easements in other lands owned by Lessor.

Section 2. CONSTRUCTION, MAINTENANCE AND OPERATION

- B. All work performed on property of the Lessor in connection with the construction, maintenance, repair, renewal, modification or reconstruction of the Pipeline shall be done to the reasonable satisfaction of the Lessor.
- C. Prior to the commencement of any work in connection with the construction, maintenance, repair, renewal, modification, relocation, reconstruction or removal of the Pipeline where it passes underneath the roadbed and track or tracks of the Lessor, the Licensee shall submit to the Lessor plans setting out the method and manner of handling the work, including the shoring and cribbing, if any, required to protect the Lessor's operations, and shall not proceed with the work until such plans have been approved by the Lessor's Assistant Vice President Engineering Design, or his authorized representative, and then the work shall be done to the satisfaction of the Lessor's Assistant Vice President Engineering Design or his authorized representative. The Lessor shall have the right, if it so elects, to provide such support as it may deem necessary for the safety of its track or tracks during the time of construction, maintenance, repair, renewal, modification, relocation, reconstruction or removal of the Pipeline, and, in the event the Lessor provides such support, the Licensee shall pay to the Lessor, within fifteen (15) days after bills shall have been rendered therefore, all expenses incurred by the Lessor in connection therewith, which expenses shall include all assignable costs.



Section 5. REINFORCEMENT, RELOCATION OR REMOVAL OF PIPELINE

The license herein granted is subject to the needs and requirements of the Licensor in the operation of its railroad and in the improvement and use of its property, and the Licensee shall, at the sole expense of the Licensee, reinforce all or any portion of the Pipeline upon reasonable prior notice whenever, in the furtherance of its needs and requirements, the Licensor shall find such action necessary or desirable.

Section 7. PROTECTION OF FIBER OPTIC CABLE SYSTEMS

B. IN ADDITION TO OTHER INDEMNITY PROVISIONS IN THIS AGREEMENT, THE LICENSEE SHALL INDEMNIFY, DEFEND AND HOLD THE LICENSOR HARMLESS FROM AND AGAINST ALL COSTS, LIABILITY AND EXPENSE WHATSOEVER (INCLUDING, WITHOUT LIMITATION, ATTORNEYS' FEES, COURT COSTS AND EXPENSES) CAUSED BY THE NEGLIGENCE OF THE LICENSEE, ITS CONTRACTOR, AGENTS AND/OR EMPLOYEES, RESULTING IN (1) ANY DAMAGE TO OR DESTRUCTION OF ANY TELECOMMUNICATIONS SYSTEM ON LICENSOR'S PROPERTY, AND/OR (2) ANY INJURY TO OR DEATH OF ANY PERSON EMPLOYED BY OR ON BEHALF OF ANY TELECOMMUNICATIONS COMPANY, AND/OR ITS CONTRACTOR, AGENTS AND/OR EMPLOYEES, ON LICENSOR'S PROPERTY, EXCEPT ~~IF SUCH COSTS,~~ TO THE EXTENT LIABILITY OR EXPENSES ARE CAUSED ~~SOLELY~~ BY THE ~~DIRECT ACTIVE~~ NEGLIGENCE OF THE LICENSOR. LICENSEE FURTHER AGREES THAT IT SHALL NOT HAVE OR SEEK RECOURSE AGAINST LICENSOR FOR ANY CLAIM OR CAUSE OF ACTION FOR ALLEGED LOSS OF PROFITS OR REVENUE OR LOSS OF SERVICE OR OTHER CONSEQUENTIAL DAMAGE TO A TELECOMMUNICATION COMPANY USING LICENSOR'S PROPERTY OR A CUSTOMER OR USER OF SERVICES OF THE FIBER OPTIC CABLE ON LICENSOR'S PROPERTY.

Section 11. REMOVAL OF PIPELINE UPON TERMINATION OF AGREEMENT

Prior to the termination of this Agreement howsoever, the Licensee shall, at Licensee's sole expense, fill the Pipeline with sand/cement or slurry to the reasonable satisfaction of the Licensor. If the Licensee fails to do the foregoing, the Licensor may do such work at the cost and expense of the Licensee. In the event of such work by the Licensor, the Licensor shall in no manner be liable to the Licensee for any damage sustained by the Licensee for or on account thereof, and such work shall in no manner prejudice or impair any right of action for damages, or otherwise, that the Licensor may have against the Licensee.

Section 13. TERMINATION

- A. If the Licensee abandons the use of the right herein granted or the Pipeline for one (1) year, or if the Licensee continues in default in the performance of any covenant or agreement herein contained for a period of thirty (30) days after written notice from the Licensor to the Licensee specifying such default, the Licensor may, at its option, forthwith immediately terminate this Agreement by written notice.
- B. Section 13(B) of Exhibit B is deleted.



ARTICLE 9. AMENDMENT OF EXHIBIT C

Sections F, G and J of Exhibit C, hereto attached, are hereby amended to read as follows:

- F. All policy(ies) required above (excluding Business Automobile Coverage and Workers Compensation) shall provide severability of interests and shall name Licensor as an additional insured. **Severability of interest and naming Licensor as additional insured shall be indicated on the certificate of insurance.**
- G. Section G of Exhibit C is deleted.
- J. Any insurance policy shall be written by a Joint Powers Insurance Authority, reputable insurance company acceptable to Licensor or with a current Best's Insurance Guide Rating of A and Class VII or better, and authorized to do business in the state(s) in which the service is to be provided.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date first herein written.

UNION PACIFIC RAILROAD COMPANY

**FRESNO METROPOLITAN FLOOD
CONTROL DISTRICT**

By: _____

By: Jerry Lakeman

Name: Jerry Lakeman
Title: District Engineer

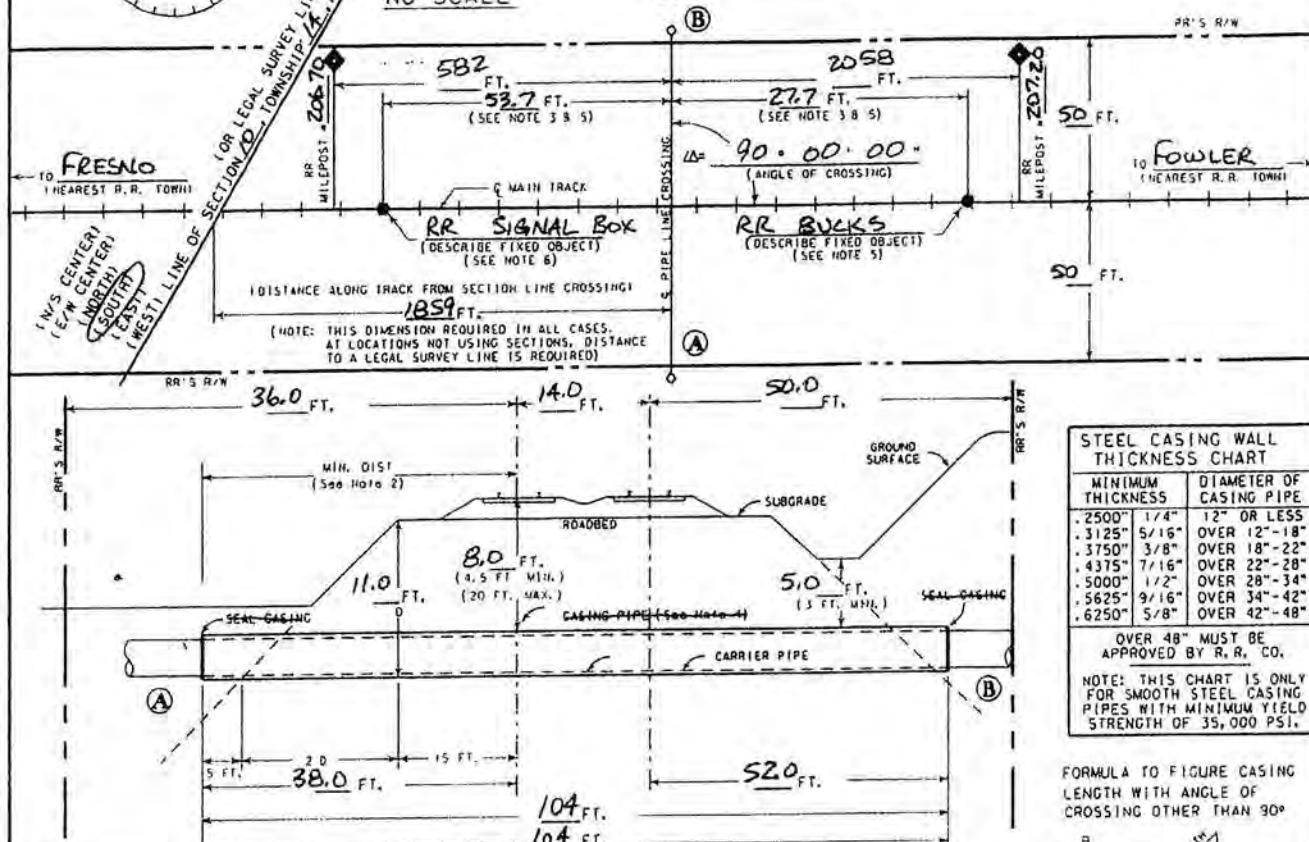


PLACE ARROW INDICATING NORTH DIRECTION RELATIVE TO CROSSING



ENCASED NON-FLAMMABLE PIPELINE CROSSING

NOTE: ALL AVAILABLE DIMENSIONS MUST BE FILLED IN TO PROCESS THIS APPLICATION.



NOTES : (CASING LENGTH WHEN MEASURED ALONG PIPELINE.)

- 1) ALL HORIZONTAL DISTANCES TO BE MEASURED AT RIGHT ANGLES FROM Q. OF TRACK.
- 2) CASING TO EXTEND BEYOND THE Q. OF TRACK AT RIGHT ANGLES THE GREATER OF 20 - 20 FT., OR 30 FT., AND BEYOND LIMIT OF RAILROAD RIGHT-OF-WAY IF NECESSARY TO PROVIDE PROPER LENGTH OUTSIDE OF TRACK.
- 3) MINIMUM OF 50' FROM THE END OF ANY RAILROAD BRIDGE, Q. OF ANY CULVERT, OR FROM ANY SWITCHING AREA.
- 4) SIGNAL REPRESENTATIVE MUST BE PRESENT DURING INSTALLATION IF RAILROAD SIGNALS ARE IN THE VICINITY OF CROSSING.
- 5) ALLOWABLE FIXED OBJECTS INCLUDE: BACKWALLS OF BRIDGES; Q. OF ROAD CROSSINGS & OVERHEAD VIADUCTS (GIVE ROAD NAME), OR CULVERTS.
- 6) CASING AND CARRIER PIPE MUST BE PLACED A MINIMUM OF 2 FEET BELOW THE EXISTING FIBER OPTIC CABLE. ANY EXCAVATION REQUIRED WITHIN 5 FEET OF THE EXISTING FIBER OPTIC CABLE MUST BE HAND DUG.

- A) IS PIPELINE CROSSING WITHIN DEDICATED STREET? YES; NO;
- B) IF YES, NAME OF STREET E. FLORENCE AVE
- D) DISTRIBUTION LINE N/A OR TRANSMISSION LINE N/A
- C) CARRIER PIPE :
COMMODITY TO BE CONVEYED STORM WATER
OPERATING PRESSURE 0 PSI
WALL THICKNESS 2 3/4"; DIAMETER 30"; MATERIAL RGRCP;
- E) CASING PIPE :
WALL THICKNESS N/A; DIAMETER N/A; MATERIAL N/A;
NOTE: CASING MUST HAVE 2" CLEARANCE BETWEEN GREATEST OUTSIDE DIAMETER OF CARRIER PIPE AND INTERIOR DIAMETER OF CASING PIPE. WHEN FURNISHING DIMENSIONS, GIVE OUTSIDE OF CARRIER PIPE AND INSIDE OF CASING PIPE.
- F) METHOD OF INSTALLING CASING PIPE UNDER TRACK(S):
 DRY BORE AND JACK (WET BORE NOT PERMITTED);
 TUNNEL; OTHER DIRECT JACK AND BORE
- G) WILL CONSTRUCTION BE BY AN OUTSIDE CONTRACTOR? YES; NO;
- H) DISTANCE FROM CENTER LINE OF TRACK TO NEAR FACE OF BORING AND JACKING PITS WHEN MEASURED AT RIGHT ANGLES TO TRACK 36.0 FT.
(30° MIN.)
- I) APPLICANT HAS CONTACTED 1-800-336-9193, U. P. COMMUNICATION DEPARTMENT, AND HAS DETERMINED FIBER OPTIC CABLE DOES; DOES NOT; EXIST IN VICINITY OF WORK TO BE PERFORMED. TICKET NO.

EXHIBIT "A"

FOR RAILROAD USE ONLY

UNION PACIFIC RAILROAD CO.

Fresno

INTERSTATE NUMBER

COUNTY STATE

Fresno

CA

ENCASED Storm drain CROSSING AT

Fresno

COUNTY STATE

Fresno

CA

Fresno Metropolitan Flood Control District

TAPLE CODE

RR FILE NO. 2459-16 DATE 4-9-08

WARNING

IN ALL OCCASIONS, U. P. COMMUNICATIONS DEPARTMENT MUST BE CONTACTED IN ADVANCE OF ANY WORK TO DETERMINE EXISTENCE AND LOCATION OF FIBER OPTIC CABLE.
PHONE: 1-800-336-9193



SEE ARTICLE 8

EXHIBIT B

Section 1. LIMITATION AND SUBORDINATION OF RIGHTS GRANTED.

- A. The foregoing grant of right is subject and subordinate to the prior and continuing right and obligation of the Licensor to use and maintain its entire property including the right and power of the Licensor to construct, maintain, repair, renew, use, operate, change, modify or relocate railroad tracks, signal, communication, fiber optics, or other wirelines, pipelines and other facilities upon, along or across any or all parts of its property, all or any of which may be freely done at any time or times by the Licensor without liability to the Licensee or to any other party for compensation or damages.
- B. The foregoing grant is also subject to all outstanding superior rights (including those in favor of licensees and lessees of the Licensor's property, and others) and the right of the Licensor to renew and extend the same, and is made without covenant of title or for quiet enjoyment.

Section 2. CONSTRUCTION, MAINTENANCE AND OPERATION.

- A. The Pipeline shall be constructed, operated, maintained, repaired, renewed, modified and/or reconstructed by the Licensee in strict conformity with (i) Licensor's current standards and specifications ("UP Specifications"), except for variances approved in advance in writing by the Licensor's Assistant Vice President Engineering – Design, or his authorized representative; (ii) such other additional safety standards as the Licensor, in its sole discretion, elects to require, including, without limitation, American Railway Engineering and Maintenance-of-Way Association ("AREMA") standards and guidelines (collectively, "UP Additional Requirements"), and (iii) all applicable laws, rules and regulations ("Laws"). If there is any conflict between the requirements of any Law and the UP Specifications or the UP Additional Requirements, the most restrictive will apply.

SEE ARTICLE 8

- B. All work performed on property of the Licensor in connection with the construction, maintenance, repair, renewal, modification or reconstruction of the Pipeline shall be done to the satisfaction of the Licensor.

- C. Prior to the commencement of any work in connection with the construction, maintenance, repair, renewal, modification, relocation, reconstruction or removal of the Pipeline where it passes underneath the roadbed and track or tracks of the Licensor, the Licensee shall submit to the Licensor plans setting out the method and manner of handling the work, including the shoring and cribbing, if any, required to protect the Licensor's operations, and shall not proceed with the work until such plans have been approved by the Licensor's Assistant Vice President Engineering Design, or his authorized representative, and then the work shall be done to the satisfaction of the Licensor's Assistant Vice President Engineering Design or his authorized representative. The



Section 7. PROTECTION OF FIBER OPTIC CABLE SYSTEMS.

A. Fiber optic cable systems may be buried on the Lessor's property. Protection of the fiber optic cable systems is of extreme importance since any break could disrupt service to users resulting in business interruption and loss of revenue and profits. Licensee shall telephone the Lessor during normal business hours (7:00 a.m. to 9:00 p.m. Central Time, Monday through Friday, except for holidays) at 1-800-336-9193 (also a 24-hour, 7-day number for emergency calls) to determine if fiber optic cable is buried anywhere on the Lessor's premises to be used by the Licensee. If it is, Licensee will telephone the telecommunications company(ies) involved, arrange for a cable locator, make arrangements for relocation or other protection of the fiber optic cable, all at Licensee's expense, and will commence no work on the Lessor's property until all such protection or relocation has been accomplished. Licensee shall indemnify and hold the Lessor harmless from and against all costs, liability and expense whatsoever (including, without limitation, attorneys' fees, court costs and expenses) arising out of or caused in any way by Licensee's failure to comply with the provisions of this paragraph

SEE ARTICLE

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~~B. IN ADDITION TO OTHER INDEMNITY PROVISIONS IN THIS AGREEMENT, THE LICENSEE SHALL INDEMNIFY, DEFEND AND HOLD THE LESSOR HARMLESS FROM AND AGAINST ALL COSTS, LIABILITY AND EXPENSE WHATSOEVER (INCLUDING, WITHOUT LIMITATION, ATTORNEYS' FEES, COURT COSTS AND EXPENSES) CAUSED BY THE NEGLIGENCE OF THE LICENSEE, ITS CONTRACTOR, AGENTS AND/OR EMPLOYEES, RESULTING IN (1) ANY DAMAGE TO OR DESTRUCTION OF ANY TELECOMMUNICATIONS SYSTEM ON LESSOR'S PROPERTY, AND/OR (2) ANY INJURY TO OR DEATH OF ANY PERSON EMPLOYED BY OR ON BEHALF OF ANY TELECOMMUNICATIONS COMPANY, AND/OR ITS CONTRACTOR, AGENTS AND/OR EMPLOYEES, ON LESSOR'S PROPERTY, EXCEPT IF SUCH COSTS, LIABILITY OR EXPENSES ARE CAUSED SOLELY BY THE DIRECT ACTIVE NEGLIGENCE OF THE LESSOR. LICENSEE FURTHER AGREES THAT IT SHALL NOT HAVE OR SEEK RE COURSE AGAINST LESSOR FOR ANY CLAIM OR CAUSE OF ACTION FOR ALLEGED LOSS OF PROFITS OR REVENUE OR LOSS OF SERVICE OR OTHER CONSEQUENTIAL DAMAGE TO A TELECOMMUNICATION COMPANY USING LESSOR'S PROPERTY OR A CUSTOMER OR USER OF SERVICES OF THE FIBER OPTIC CABLE ON LESSOR'S PROPERTY.~~

Section 8. CLAIMS AND LIENS FOR LABOR AND MATERIAL; TAXES.

A. The Licensee shall fully pay for all materials joined or affixed to and labor performed upon property of the Lessor in connection with the construction, maintenance, repair, renewal, modification or reconstruction of the Pipeline, and shall not permit or suffer any mechanic's or materialman's lien of any kind or nature to be enforced against the property for any work done or materials furnished thereon at the instance or request or on behalf of the Licensee. The Licensee shall indemnify and hold harmless the Lessor against and from any and all liens, claims, demands, costs and expenses of whatsoever nature in any way connected with or growing out of such work done, labor performed, or materials furnished.



- B. The Licensee shall promptly pay or discharge all taxes, charges and assessments levied upon, in respect to, or on account of the Pipeline, to prevent the same from becoming a charge or lien upon property of the Licenser, and so that the taxes, charges and assessments levied upon or in respect to such property shall not be increased because of the location, construction or maintenance of the Pipeline or any improvement, appliance or fixture connected therewith placed upon such property, or on account of the Licensee's interest therein. Where such tax, charge or assessment may not be separately made or assessed to the Licensee but shall be included in the assessment of the property of the Licenser, then the Licensee shall pay to the Licenser an equitable proportion of such taxes determined by the value of the Licensee's property upon property of the Licenser as compared with the entire value of such property.

Section 9. RESTORATION OF LICENSOR'S PROPERTY.

In the event the Licenser authorizes the Licensee to take down any fence of the Licenser or in any manner move or disturb any of the other property of the Licenser in connection with the construction, maintenance, repair, renewal, modification, reconstruction, relocation or removal of the Pipeline, then in that event the Licensee shall, as soon as possible and at Licensee's sole expense, restore such fence and other property to the same condition as the same were in before such fence was taken down or such other property was moved or disturbed, and the Licensee shall indemnify and hold harmless the Licenser, its officers, agents and employees, against and from any and all liability, loss, damages, claims, demands, costs and expenses of whatsoever nature, including court costs and attorneys' fees, which may result from injury to or death of persons whomsoever, or damage to or loss or destruction of property whatsoever, when such injury, death, damage, loss or destruction grows out of or arises from the taking down of any fence or the moving or disturbance of any other property of the Licenser.

Section 10. INDEMNITY.

- A. As used in this Section, "Licenser" includes other railroad companies using the Licenser's property at or near the location of the Licensee's installation and their officers, agents, and employees; "Loss" includes loss, damage, claims, demands, actions, causes of action, penalties, costs, and expenses of whatsoever nature, including court costs and attorneys' fees, which may result from: (a) injury to or death of persons whomsoever (including the Licenser's officers, agents, and employees, the Licensee's officers, agents, and employees, as well as any other person); and/or (b) damage to or loss or destruction of property whatsoever (including Licensee's property, damage to the roadbed, tracks, equipment, or other property of the Licenser, or property in its care or custody).
- B. AS A MAJOR INDUCEMENT AND IN CONSIDERATION OF THE LICENSE AND PERMISSION HEREIN GRANTED, THE LICENSEE AGREES TO INDEMNIFY, DEFEND AND HOLD HARMLESS THE LICENSOR FROM ANY LOSS WHICH IS DUE TO OR ARISES FROM:**
1. **THE PROSECUTION OF ANY WORK CONTEMPLATED BY THIS AGREEMENT INCLUDING THE INSTALLATION, CONSTRUCTION, MAINTENANCE, REPAIR, RENEWAL, MODIFICATION, RECONSTRUCTION, RELOCATION, OR REMOVAL OF THE PIPELINE OR ANY PART THEREOF;**



2. THE PRESENCE, OPERATION, OR USE OF THE PIPELINE OR CONTENTS ESCAPING THEREFROM; OR
3. LICENSEE'S BREACH OF THIS AGREEMENT, EXCEPT WHERE THE LOSS IS CAUSED BY THE SOLE DIRECT NEGLIGENCE OF THE LICENSOR, AS DETERMINED IN A FINAL JUDGMENT BY A COURT OF COMPETENT JURISDICTION, IT BEING THE INTENTION OF THE PARTIES THAT THE ABOVE INDEMNITY WILL OTHERWISE APPLY TO LOSSES CAUSED BY OR ARISING FROM, IN WHOLE OR IN PART, LICENSOR'S NEGLIGENCE.

SEE ARTICLE 8

Section 11. REMOVAL OF PIPELINE UPON TERMINATION OF AGREEMENT.

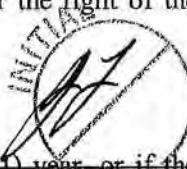


Prior to the termination of this Agreement howsoever, the Licensee shall, at Licensee's sole expense, remove the Pipeline from those portions of the property not occupied by the roadbed and track or tracks of the Licensor and shall restore, to the satisfaction of the Licensor, such portions of such property to as good a condition as they were in at the time of the construction of the Pipeline. If the Licensee fails to do the foregoing, the Licensor may, but is not obligated, to perform such work of removal and restoration at the cost and expense of the Licensee. In the event of the removal by the Licensor of the property of the Licensee and of the restoration of the roadbed and property as herein provided, the Licensor shall in no manner be liable to the Licensee for any damage sustained by the Licensee for or on account thereof, and such removal and restoration shall in no manner prejudice or impair any right of action for damages, or otherwise, that the Licensor may have against the Licensee.

Section 12. WAIVER OF BREACH.

The waiver by the Licensor of the breach of any condition, covenant or agreement herein contained to be kept, observed and performed by the Licensee shall in no way impair the right of the Licensor to avail itself of any remedy for any subsequent breach thereof.

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Section 13. TERMINATION.

SEE ARTICLE 8

- A. If the Licensee does not use the right herein granted or the Pipeline for one (1) year, or if the Licensee continues in default in the performance of any covenant or agreement herein contained for a period of thirty (30) days after written notice from the Licensor to the Licensee specifying such default, the Licensor may, at its option, forthwith immediately terminate this Agreement by written notice.
- B. In addition to the provisions of subparagraph (a) above, this Agreement may be terminated by written notice given by either party hereto to the other on any date in such notice stated, not less, however, than thirty (30) days subsequent to the date upon which such notice shall be given.
- C. Notice of default and notice of termination may be served personally upon the Licensee or by mailing to the last known address of the Licensee. Termination of this Agreement for any reason shall not affect any of the rights or obligations of the parties hereto which may have accrued, or liabilities, accrued or otherwise, which may have arisen prior thereto.



Section 14. AGREEMENT NOT TO BE ASSIGNED.

The Licensee shall not assign this Agreement, in whole or in part, or any rights herein granted, without the written consent of the Licenser, and it is agreed that any transfer or assignment or attempted transfer or assignment of this Agreement or any of the rights herein granted, whether voluntary, by operation of law, or otherwise, without such consent in writing, shall be absolutely void and, at the option of the Licenser, shall terminate this Agreement.

Section 15. SUCCESSORS AND ASSIGNS.

Subject to the provisions of Section 14 hereof, this Agreement shall be binding upon and inure to the benefit of the parties hereto, their heirs, executors, administrators, successors and assigns.



EXHIBIT C

**Union Pacific Railroad
Insurance Requirements**

Licensee shall, at its sole cost and expense, (except for Railroad Protective Liability Insurance required in Paragraph D), procure and maintain in effect during the term of this Agreement the following insurance coverage. Licensee shall procure and maintain, or cause to be procured and maintained by its contractor, at its sole cost and expense, Railroad Protective Liability Insurance coverage described in Paragraph D during any period of construction, maintenance, repair or reconstruction work.

A. **Commercial General Liability** insurance. Commercial general liability (CGL) with a limit of not less than \$2,000,000 each occurrence and an aggregate limit of not less than \$4,000,000. CGL insurance must be written on ISO occurrence form CG 00 01 12 04 (or a substitute form providing equivalent coverage).

The policy must also contain the following endorsement, which must be stated on the certificate of insurance:

- Contractual Liability Railroads ISO form CG 24 17 10 01 (or a substitute form providing equivalent coverage) showing "Union Pacific Railroad Company Property" as the Designated Job Site.

B. **Business Automobile Coverage** insurance. Business auto coverage written on ISO form CA 00 01 (or a substitute form providing equivalent liability coverage) with a combined single limit of not less \$2,000,000 for each accident.

The policy must contain the following endorsements, which must be stated on the certificate of insurance:

- Coverage For Certain Operations In Connection With Railroads ISO form CA 20 70 10 01 (or a substitute form providing equivalent coverage) showing "Union Pacific Property" as the Designated Job Site.
- Motor Carrier Act Endorsement - Hazardous materials clean up (MCS-90) if required by law.

C. **Workers Compensation and Employers Liability** insurance. Coverage must include but not be limited to:

- Licensee's and/or Licensee's contractor's statutory liability under the workers' compensation laws of the state where the Utility/Facility is located.
- Employers' Liability (Part B) with limits of at least \$500,000 each accident, \$500,000 disease policy limit \$500,000 each employee.

If Licensee, and/or Licensee's contractor, is self-insured, evidence of state approval and excess workers compensation coverage must be provided. Coverage must include liability arising out of the U. S. Longshoremen's and Harbor Workers' Act, the Jones Act, and the Outer Continental Shelf Land Act, if applicable.



The policy must contain the following endorsement, which must be stated on the certificate of insurance:

- Alternate Employer endorsement ISO form WC 00 03 01 A (or a substitute form providing equivalent coverage) showing Railroad in the schedule as the alternate employer (or a substitute form providing equivalent coverage).

D. Railroad Protective Liability insurance. Railroad Protective Liability insurance written on ISO occurrence form CG 00 35 12 04 (or a substitute form providing equivalent coverage) on behalf of Licensor as named insured, with a limit of not less than \$2,000,000 per occurrence and an aggregate of \$6,000,000. A binder stating the policy is in place must be submitted to Licensor before the work may be commenced and until the original policy is forwarded to Licensor.

E. Umbrella or Excess insurance. If Licensee, and/or Licensee's contractor, utilizes umbrella or excess policies, these policies must "follow form" and afford no less coverage than the primary policy.

Other Requirements

SEE ARTICLE

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F. All policy(ies) required above (except worker's compensation and employers liability) must include Licensor as "Additional Insured" using ISO Additional Insured Endorsements CG 20 26, and CA 20 48 (or substitute forms providing equivalent coverage). The coverage provided to Licensor as additional insured shall, to the extent provided under ISO Additional Insured Endorsement CG 20 26, and CA 20 48 provide coverage for Licensor's negligence whether sole or partial, active or passive, and shall not be limited by Licensee's liability under the indemnity provisions of this Agreement.

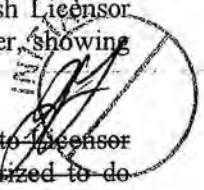
G. Punitive damages ~~exclusion, if any, must be deleted (and the deletion indicated on the certificate of insurance), unless the law governing this Agreement prohibits all punitive damages that might arise under this Agreement.~~

H. Licensee waives all rights of recovery, and its insurers also waive all rights of subrogation of damages against Railroad and its agents, officers, directors and employees. This waiver must be stated on the certificate of insurance.

I. Prior to commencing any work, Licensee, and/or Licensee's contractor, shall furnish Licensor with a certificate(s) of insurance, executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements in this Agreement.

SEE ARTICLE

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J. All insurance policies must be written by a reputable insurance company acceptable to Licensor or with a current Best's Insurance Guide Rating of A and Class VII or better, and authorized to do business in the state in which the Utility is located.

K. The fact that insurance is obtained by Licensee, and/or Licensee's contractor, or by Licensor on behalf of Licensee, and/or Licensee's contractor, will not be deemed to release or diminish the liability of Licensee, including, without limitation, liability under the indemnity provisions of this Agreement. Damages recoverable by Licensor from Licensee or any third party will not be limited by the amount of the required insurance coverage.



NEW

DOCUMENT



Pipeline Crossing 080808
Form Approved, AVP-Law

Folder No. 2591-66

PIPELINE CROSSING AGREEMENT

Mile Post: 207, Fresno Subdivision
Location: Fresno, Fresno County, California

THIS AGREEMENT ("Agreement") is made and entered into as of December 31, 2009, ("Effective Date") by and between **UNION PACIFIC RAILROAD COMPANY**, a Delaware corporation, ("Licensor") and **FRESNO METROPOLITAN FLOOD CONTROL DISTRICT**, a California municipal corporation to be addressed at 5469 E Olive Avenue, Fresno, California 93727 ("Licensee").

IT IS MUTUALLY AGREED BY AND BETWEEN THE PARTIES HERETO AS FOLLOWS:

Article 1. LICENSOR GRANTS RIGHT.

In consideration of the license fee to be paid by the Licensee and in further consideration of the covenants and agreements herein contained to be by the Licensee kept, observed and performed, the Licensor hereby grants to the Licensee the right to construct and thereafter, during the term hereof, to maintain and operate

one 24" uncased pipeline for transporting and conveying storm water only

across Licensor's track(s) and property (the "Pipeline") in the location shown and in conformity with the dimensions and specifications indicated on the print dated December 10, 2009 and marked **Exhibit A**, attached hereto and hereby made a part hereof. Under no circumstances shall Licensee modify the use of the Pipeline for a purpose other than transporting and conveying storm water, and the Pipeline shall not be used to convey any other substance, any fiber optic cable, or for any other use, whether such use is currently technologically possible, or whether such use may come into existence during the life of this Agreement.

Article 2. LICENSE FEE.

Upon execution of this Agreement, the Licensee shall pay to the Licensor a one-time License Fee of **Three Thousand Dollars (\$3,000.00)**.

Article 3. CONSTRUCTION, MAINTENANCE AND OPERATION.

The grant of right herein made to the Licensee is subject to each and all of the terms, provisions, conditions, limitations and covenants set forth herein and in **Exhibit B**, attached hereto and hereby made a part hereof.

Article 4. DEFINITION OF LICENSEE.

For purposes of this Agreement, all references in this Agreement to the Licensee shall include the Licensee's contractors, subcontractors, officers, agents and employees, and others acting under its or their authority. If a contractor is hired by the Licensee for any work performed on the Pipeline (including initial construction and subsequent relocation or maintenance and repair work), then the Licensee shall provide a copy of this Agreement to its contractor and require its contractor to comply with all the terms and provisions hereof relating to the work to be performed. Any contractor or subcontractor shall be deemed an agent of Licensee for the purpose of this Agreement, and Licensee shall require such contractor or subcontractor to release, defend and indemnify Lessor to the same extent and under the same terms and conditions as Licensee is required to release, defend and indemnify Lessor herein.

Article 5. INSURANCE.

A. Before commencement of the term of this Agreement and prior to any Pipeline construction, the Licensee, at its sole expense, shall obtain and maintain, or cause to be obtained and maintained, the insurance required in **Exhibit C** attached hereto and hereby made a part hereof. The Licensee, at its sole expense, shall also provide to the Lessor the other insurance binders, certificates and endorsements described in **Exhibit C**, and also require that its contractor or subcontractor maintain the insurance coverages as set forth in **Exhibit C**, naming Lessor as and additional insured.

B. Not more frequently than once every two years, Lessor may reasonably modify the required insurance coverage to reflect then-current risk management practices in the railroad industry and underwriting practices in the insurance industry.

C. All insurance correspondence, binders, certificates and endorsements shall be directed to:

Union Pacific Railroad Company
Real Estate Department – Folder No. 2591-66
1400 Douglas Street STOP 1690
Omaha, NE 68179-1690

D. Failure to provide evidence as required by this section shall entitle, but not require, Lessor to terminate this License immediately. Acceptance of a certificate that does not comply with this Article shall not operate as a waiver of Licensee's obligations hereunder.

E. If the Licensee is a public entity subject to any applicable statutory tort laws, the limits of insurance described in **Exhibit C** shall be the limits the Licensee then has in effect or which is required by applicable current or subsequent law, whichever is greater, a portion of which may be self-insured with the consent and approval of Lessor.

F. The fact that insurance (including without limitation, self-insurance) is obtained by Licensee or its contractor/subcontractor shall not be deemed to release or diminish the liability of Licensee including, without limitation, liability under the indemnity provisions of this License. Damages recoverable by Lessor shall not be limited by the amount of the required insurance coverage.

Article 6. TERM.

This Agreement shall take effect as of the Effective Date first herein written and shall continue in full force and effect until terminated as herein provided.

Article 7. SPECIAL PROVISION – RAILROAD FLAGMAN; WHEN REQUIRED; FLAGGING CHARGES.

A. No work of any kind shall be performed, and no person, equipment, machinery, tool(s), material(s), vehicle(s), or thing(s) shall be located, operated, placed, or stored within 25 feet of any of Railroad's track(s) at any time, for any reason, unless and until a Railroad flagman is provided to watch for trains, pursuant to the terms of the attached Exhibit 'B'. All expenses connected with the furnishing of said flagman shall be at the sole cost and expense of the Licensee, who shall promptly pay to Railroad all charges connected therewith, within 30 days after presentation of a bill therefore.

B. One and one-half times the current hourly rate is paid for overtime, Saturdays and Sundays; two and one-half times current hourly rate for holidays.

C. Wage rates are subject to change, at any time, by law or by agreement between the Railroad and its employees, and may be retroactive as a result of negotiations or a ruling of an authorized Governmental Agency. Additional charges on labor are also subject to change. If the wage rate or additional charges are changed, the Licensee shall pay on the basis of the new rates and charges.

D. Reimbursement to the Railroad will be required covering the full eight hour day during which any flagman is furnished, unless he can be assigned to other Railroad work during a portion of such day, in which event reimbursement will not be required for the portion of the day during which the flagman is engaged in other work. Reimbursement will also be required for any day not actually worked by said flagman following his assignment to work on the project for which the Railroad is required to pay the flagman and which could not reasonably be avoided by the Railroad Company by assignment of such flagman to other work, even though the Licensee may not be working during such time.

E. Arrangements for flagging are to be made at least Ten (10) days in advance of commencing work, with the Railroad Manager of Track Maintenance.

Article 8. AMENDMENT OF EXHIBIT B.

Sections 1(A), 2 (B), and (C); 5 (A) and (B); 7 (B), and 13 (A) and (B) of Exhibit B, hereto attached, are amended to read as follows:

Section 1. LIMITATION AND SUBORDINATION OF RIGHTS GRANTED

A. The Rights of the Lessor and Licensee shall be governed by the within Agreement. To the extent their rights are not defined herein (e.g., priorities of use in the servient tenement), and the parties do not otherwise agree, they shall be determined by the Court, if the Licensee condemns an easement in the property subject to this License Agreement. If the Licensee does not condemn an easement in the property subject hereto, rights not defined herein shall be as determined in Fresno County Superior Court condemnation No. 02 CE CG 02913, Fresno Metropolitan Flood Control v Union Pacific Railroad Company, which pertains to underground pipeline easement in other lands owned by Lessor.

Section 2. CONSTRUCTION, MAINTENANCE AND OPERATION

B All work performed on property of the Lessor in connection with the design, construction, maintenance, repair, renewal, modification or reconstruction of the Pipeline shall be done to the reasonable satisfaction of the Lessor.

C. Prior to the commencement of any work in connection with the design, construction, maintenance, repair, renewal, modification, relocation, reconstruction or removal of the Pipeline where it passes underneath the roadbed and track or tracks of the Licensor, the Licensee shall submit to the Licensor plans setting out the method and manner of handling the work, including the shoring and cribbing, if any, required to protect the Licensor's operations, and shall not proceed with the work until such plans have been approved by the Licensor's Assistant Vice President Engineering Design, or his authorized representative, and then the work shall be done to the satisfaction of the Licensor's Assistant Vice President Engineering Design or his authorized representative. The Licensor shall have the right, if it so elects, to provide such support as it may deem necessary for the safety of its track or tracks during the time of construction, maintenance, repair, renewal, modification, relocation, reconstruction or removal of the Pipeline, and, in the event the Licensor provides such support, the Licensee shall pay to the Licensor, within fifteen (15) days after bills shall have been rendered therefore, all expenses incurred by the Licensor in connection therewith, which expenses shall include all assignable costs.

Section 5. REINFORCEMENT, RELOCATION OR REMOVAL OF PIPELINE

The license herein granted is subject to the needs and requirements of the Licensor in the operation of its railroad and in the improvement and use of its property, and the Licensee shall, at the sole expense of the Licensee, reinforce all or any portion of the Pipeline upon reasonable prior notice whenever, in the furtherance of its needs and requirements, the Licensor shall find such action necessary or desirable.

Section 7. PROTECTION OF FIBER OPTIC CABLE SYSTEMS

B. IN ADDITION TO OTHER INDEMNITY PROVISIONS IN THIS AGREEMENT, THE LICENSEE SHALL, AND SHALL CAUSE ITS CONTRACTOR TO, RELEASE, INDEMNIFY, DEFEND AND HOLD THE LICENSOR HARMLESS FROM AND AGAINST ALL COSTS, LIABILITY AND EXPENSE WHATSOEVER (INCLUDING, WITHOUT LIMITATION, ATTORNEYS' FEES, COURT COSTS AND EXPENSES) CAUSED BY THE NEGLIGENCE OF THE LICENSEE, ITS CONTRACTOR, AGENTS AND/OR EMPLOYEES, RESULTING IN (1) ANY DAMAGE TO OR DESTRUCTION OF ANY TELECOMMUNICATIONS SYSTEM ON LICENSOR'S PROPERTY, AND/OR (2) ANY INJURY TO OR DEATH OF ANY PERSON EMPLOYED BY OR ON BEHALF OF ANY TELECOMMUNICATIONS COMPANY, AND/OR ITS CONTRACTOR, AGENTS AND/OR EMPLOYEES, ON LICENSOR'S PROPERTY, EXCEPT IF SUCH COSTS, TO THE EXTENT LIABILITY OR EXPENSES ARE CAUSED SOLELY BY THE DIRECT ACTIVE NEGLIGENCE OF THE LICENSOR. LICENSEE FURTHER AGREES THAT IT SHALL NOT HAVE OR SEEK RECOURSE AGAINST LICENSOR FOR ANY CLAIM OR CAUSE OF ACTION FOR ALLEGED LOSS OF PROFITS OR REVENUE OR LOSS OF SERVICE OR OTHER CONSEQUENTIAL DAMAGE TO A TELECOMMUNICATION COMPANY USING LICENSOR'S PROPERTY OR A CUSTOMER OR USER OF SERVICES OF THE FIBER OPTIC CABLE ON LICENSOR'S PROPERTY.

Section 11. REMOVAL OF PIPELINE UPON TERMINATION OF AGREEMENT

Prior to the termination of this Agreement howsoever, the Licensee shall, at Licensee's sole expense, fill the Pipeline with sand/cement or slurry to the reasonable satisfaction of the Lessor. If the Licensee fails to do the foregoing, the Lessor may do such work at the cost and expense of the Licensee. In the event of such work by the Lessor, the Lessor shall in no manner be liable to the Licensee for any damage sustained by the Licensee for or on account thereof, and such work shall in no manner prejudice or impair any right of action for damages, or otherwise, that the Lessor may have against the Licensee.

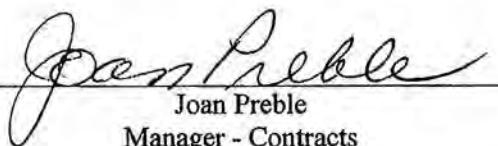
Section 13. TERMINATION

- A. If the Licensee abandons the use of the right herein granted or the Pipeline for one (1) year, or if the Licensee continues in default in the performance of any covenant or agreement herein contained for a period of thirty (30) days after written notice from the Lessor to the Licensee specifying such default, the Lessor may, at its option, forthwith immediately terminate this Agreement by written notice.
- B. Section 13(B) of Exhibit B is deleted.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date first herein written.

UNION PACIFIC RAILROAD COMPANY

By:



Joan Preble
Manager - Contracts

**FRESNO METROPOLITAN FLOOD
CONTROL DISTRICT**

By:



Name Printed: Jerry Laskeran
Title: District Engineer

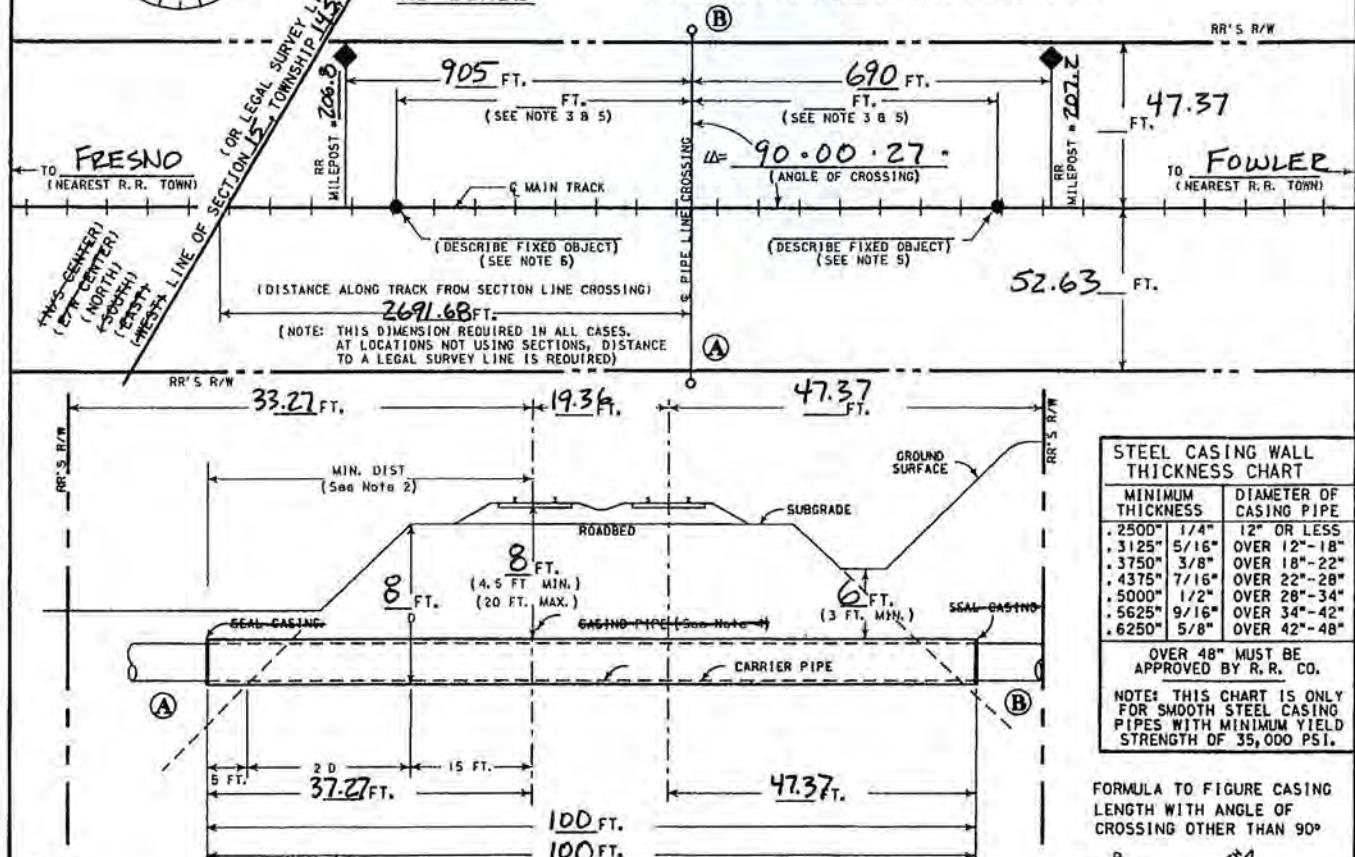
PLACE ARROW INDICATING NORTH DIRECTION RELATIVE TO CROSSING



FORM DR-0404-B
REV. 5-15-98
WWW.UPRR.COM

ENCASED NON-FLAMMABLE PIPELINE CROSSING

NOTE: ALL AVAILABLE DIMENSIONS MUST BE FILLED IN TO PROCESS THIS APPLICATION.



NOTES :

- 1) ALL HORIZONTAL DISTANCES TO BE MEASURED AT RIGHT ANGLES FROM Q. OF TRACK.
- 2) CASING TO EXTEND BEYOND THE Q. OF TRACK AT RIGHT ANGLES THE GREATER OF 2D + 20 FT., OR 30 FT., AND BEYOND LIMIT OF RAILROAD RIGHT-OF-WAY IF NECESSARY TO PROVIDE PROPER LENGTH OUTSIDE OF TRACK.
- 3) MINIMUM OF 50' FROM THE END OF ANY RAILROAD BRIDGE, Q. OF ANY CULVERT, OR FROM ANY SWITCHING AREA.
- 4) SIGNAL REPRESENTATIVE MUST BE PRESENT DURING INSTALLATION IF RAILROAD SIGNALS ARE IN THE VICINITY OF CROSSING.
- 5) ALLOWABLE FIXED OBJECTS INCLUDE BACKWALLS OF BRIDGES; Q. OF ROAD CROSSINGS & OVERHEAD VIADUCTS (GIVE ROAD NAME); OR CULVERTS.
- 6) CASING AND CARRIER PIPE MUST BE PLACED A MINIMUM OF 2 FEET BELOW THE EXISTING FIBER OPTIC CABLE. ANY EXCAVATION REQUIRED WITHIN 5 FEET OF THE EXISTING FIBER OPTIC CABLE MUST BE HAND DUG.

- A) IS PIPELINE CROSSING WITHIN DEDICATED STREET? YES; NO;
- B) IF YES, NAME OF STREET E. BELGRAVIA AVE
- C) DISTRIBUTION LINE — OR TRANSMISSION LINE —
- C) CARRIER PIPE :
- COMMODITY TO BE CONVEYED STORM WATER
 OPERATING PRESSURE 0 PSI
 WALL THICKNESS .3"; DIAMETER 24"; MATERIAL PCP;
- E) CASING PIPE :
- WALL THICKNESS —; DIAMETER —; MATERIAL —;
 NOTE : CASING MUST HAVE 2" CLEARANCE BETWEEN GREATEST OUTSIDE DIAMETER OF CARRIER PIPE AND INTERIOR DIAMETER OF CASING PIPE. WHEN FURNISHING DIMENSIONS, GIVE OUTSIDE OF CARRIER PIPE AND INSIDE OF CASING PIPE.
- F) METHOD OF INSTALLING CASING PIPE UNDER TRACK(S):
 DRY BORE AND JACK (WET BORE NOT PERMITTED);
TUNNEL; OTHER DIRECT JACK AND BORE
- G) WILL CONSTRUCTION BE BY AN OUTSIDE CONTRACTOR? YES; NO;
- H) DISTANCE FROM CENTER LINE OF TRACK TO NEAR FACE OF BORING AND JACKING PITS WHEN MEASURED AT RIGHT ANGLES TO TRACK 53 (30' MIN.)
- I) APPLICANT HAS CONTACTED 1-800-336-9193, U. P. COMMUNICATION DEPARTMENT, AND HAS DETERMINED FIBER OPTIC CABLE DOES —; DOES NOT —; EXIST IN VICINITY OF WORK TO BE PERFORMED. TICKET NO. 20090514021

EXHIBIT "A"

FOR RAILROAD USE ONLY

UNION PACIFIC RAILROAD CO.

Fresno

(SUBDIVISION)

M. P. 207 E. S. 6009+55+

ENCASED Storm Drv CROSSING AT

Fresno Fresno CA

(NEAREST CITY) (COUNTRY) (STATE)

Fresno Metro Flood Control District

(APPLICANT)

RR FILE NO. 2591-66 DATE 12-16-04

WARNING

IN ALL OCCASIONS, U. P. COMMUNICATIONS DEPARTMENT MUST BE CONTACTED IN ADVANCE OF ANY WORK TO DETERMINE EXISTENCE AND LOCATION OF FIBER OPTIC CABLE.
 PHONE # 1-800-336-9193

SEE ARTICLE _____

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EXHIBIT B

[Handwritten Signature]
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Section 1. LIMITATION AND SUBORDINATION OF RIGHTS GRANTED.

- A. The foregoing grant of right is subject and subordinate to the prior and continuing right and obligation of the Licensor to use and maintain its entire property including the right and power of the Licensor to construct, maintain, repair, renew, use, operate, change, modify or relocate railroad tracks, signal, communication, fiber optics, or other wirelines, pipelines and other facilities upon, along or across any or all parts of its property, all or any of which may be freely done at any time or times by the Licensor without liability to the Licensee or to any other party for compensation or damages.
- B. The foregoing grant is also subject to all outstanding superior rights (including those in favor of licensees and lessees of the Licensor's property, and others) and the right of the Licensor to renew and extend the same, and is made without covenant of title or for quiet enjoyment.

Section 2. CONSTRUCTION, MAINTENANCE AND OPERATION.

- A. The Pipeline shall be designed, constructed, operated, maintained, repaired, renewed, modified and/or reconstructed by the Licensee in strict conformity with (i) Licensor's current standards and specifications ("UP Specifications"), except for variances approved in advance in writing by the Licensor's Assistant Vice President Engineering – Design, or his authorized representative; (ii) such other additional safety standards as the Licensor, in its sole discretion, elects to require, including, without limitation, American Railway Engineering and Maintenance-of-Way Association ("AREMA") standards and guidelines (collectively, "UP Additional Requirements"), and (iii) all applicable laws, rules and regulations ("Laws"). If there is any conflict between the requirements of any Law and the UP Specifications or the UP Additional Requirements, the most restrictive will apply.
- SEE ARTICLE _____
- 8
- B. All work performed on property of the Licensor in connection with the design, construction, maintenance, repair, renewal, modification or reconstruction of the Pipeline shall be done to the satisfaction of the Licensor.
- C. Prior to the commencement of any work in connection with the design, construction, maintenance, repair, renewal, modification, relocation, reconstruction or removal of the Pipeline from Licensor's property, the Licensee shall submit to the Licensor plans setting out the method and manner of handling the work, including the shoring and cribbing, if any, required to protect the Licensor's operations, and shall not proceed with the work until such plans have been approved by the Licensor's Assistant Vice President Engineering Design, or his authorized representative, and then the work shall be done to the satisfaction of the Licensor's Assistant Vice President Engineering Design or his authorized representative. The Licensor shall have the right, if it so elects, to provide such support as it may deem necessary for the safety of its track or tracks during the time of construction, maintenance, repair, renewal, modification, relocation, reconstruction or removal of the Pipeline, and, in the event the Licensor provides such support, the Licensee shall pay to the Licensor, within fifteen (15) days after bills shall have been rendered therefore, all expenses incurred by the Licensor in connection therewith, which expenses shall include all assignable costs.

[Handwritten Signature]
INITIALS
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- D. The Licensee shall keep and maintain the soil over the Pipeline thoroughly compacted and the grade even with the adjacent surface of the ground.
- E. In the prosecution of any work covered by this Agreement, Licensee shall secure any and all necessary permits and shall comply with all applicable federal, state and local laws, regulations and enactments affecting the work including, without limitation, all applicable Federal Railroad Administration regulations.

Section 3. NOTICE OF COMMENCEMENT OF WORK / LICENSOR REPRESENTATIVE / SUPERVISION / FLAGGING / SAFETY.

- A. If an emergency should arise requiring immediate attention, the Licensee shall provide as much notice as practicable to Lessor before commencing any work. In all other situations, the Licensee shall notify the Lessor at least ten (10) days (or such other time as the Lessor may allow) in advance of the commencement of any work upon property of the Lessor in connection with the construction, maintenance, repair, renewal, modification, reconstruction, relocation or removal of the Pipeline. All such work shall be prosecuted diligently to completion. The Licensee will coordinate its initial, and any subsequent work with the following employee of Lessor or his or her duly authorized representative (hereinafter "Lessor Representative" or "Railroad Representative"):

**JOSHUA ROBINSON, MTM
UNION PACIFIC RAILROAD
515-708-0439
515-943-0438**

- B. Licensee, at its own expense, shall adequately police and supervise all work to be performed. The responsibility of Licensee for safe conduct and adequate policing and supervision of work shall not be lessened or otherwise affected by Lessor's approval of plans and specifications involving the work, or by Lessor's collaboration in performance of any work, or by the presence at the work site of a Lessor Representative, or by compliance by Licensee with any requests or recommendations made by the Lessor Representative.
- C. At the request of Lessor, Licensee shall remove from Lessor's property any employee who fails to conform to the instructions of the Lessor Representative in connection with the work on Lessor's property. Licensee shall indemnify Lessor against any claims arising from the removal of any such employee from Lessor's property.
- D. Licensee shall notify the Lessor Representative at least ten (10) working days in advance of proposed performance of any work in which any person or equipment will be within twenty-five (25) feet of any track, or will be near enough to any track that any equipment extension (such as, but not limited to, a crane boom) will reach to within twenty-five (25) feet of any track. No work of any kind shall be performed, and no person, equipment, machinery, tool(s), material(s), vehicle(s), or thing(s) shall be located, operated, placed, or stored within twenty-five (25) feet of any of Lessor's track(s) at any time, for any reason, unless and until a railroad flagman is provided to watch for trains. Upon receipt of such ten (10) day notice, the Lessor Representative will determine and inform Lessor whether a flagman need be present and whether any special protective or safety measures need to be implemented. If flagging or other special protective or safety measures are performed by Lessor, Lessor will bill Licensee for

such expenses incurred by Lessor, unless Lessor and a federal, state or local governmental entity have agreed that Lessor is to bill such expenses to the federal, state or local governmental entity. If Lessor will be sending the bills to Licensee, Licensee shall pay such bills within thirty (30) days of receipt of billing. If Lessor performs any flagging, or other special protective or safety measures are performed by Lessor, Licensee agrees that Licensee is not relieved of any of responsibilities or liabilities set forth in this Agreement.

- E. The rate of pay per hour for each flagman will be the prevailing hourly rate in effect for an eight-hour day for the class of flagmen used during regularly assigned hours and overtime in accordance with Labor Agreements and Schedules in effect at the time the work is performed. In addition to the cost of such labor, a composite charge for vacation, holiday, health and welfare, supplemental sickness, Railroad Retirement and unemployment compensation, supplemental pension, Employees Liability and Property Damage and Administration will be included, computed on actual payroll. The composite charge will be the prevailing composite charge in effect at the time the work is performed. One and one-half times the current hourly rate is paid for overtime, Saturdays and Sundays, and two and one-half times current hourly rate for holidays. Wage rates are subject to change, at any time, by law or by agreement between Lessor and its employees, and may be retroactive as a result of negotiations or a ruling of an authorized governmental agency. Additional charges on labor are also subject to change. If the wage rate or additional charges are changed, Licensee (or the governmental entity, as applicable) shall pay on the basis of the new rates and charges.
- F. Reimbursement to Lessor will be required covering the full eight-hour day during which any flagman is furnished, unless the flagman can be assigned to other railroad work during a portion of such day, in which event reimbursement will not be required for the portion of the day during which the flagman is engaged in other railroad work. Reimbursement will also be required for any day not actually worked by the flagman following the flagman's assignment to work on the project for which Lessor is required to pay the flagman and which could not reasonably be avoided by Lessor by assignment of such flagman to other work, even though Licensee may not be working during such time. When it becomes necessary for Lessor to bulletin and assign an employee to a flagging position in compliance with union collective bargaining agreements, Licensee must provide Lessor a minimum of five (5) days notice prior to the cessation of the need for a flagman. If five (5) days notice of cessation is not given, Licensee will still be required to pay flagging charges for the five (5) day notice period required by union agreement to be given to the employee, even though flagging is not required for that period. An additional ten (10) days notice must then be given to Lessor if flagging services are needed again after such five day cessation notice has been given to Lessor.
- G. Safety of personnel, property, rail operations and the public is of paramount importance in the prosecution of the work performed by Licensee or its contractor. Licensee shall be responsible for initiating, maintaining and supervising all safety, operations and programs in connection with the work. Licensee and its contractor shall at a minimum comply with Lessor's safety standards listed in **Exhibit D**, hereto attached, to ensure uniformity with the safety standards followed by Lessor's own forces. As a part of Licensee's safety responsibilities, Licensee shall notify Lessor if it determines that any of Lessor's safety standards are contrary to good safety practices. Licensee and its contractor shall furnish copies of **Exhibit D** to each of its employees before they enter the job site.
- H. Without limitation of the provisions of paragraph G above, Licensee shall keep the job site free from safety and health hazards and ensure that their employees are competent and adequately trained in all safety and health aspects of the job.

- I. Licensee shall have proper first aid supplies available on the job site so that prompt first aid services may be provided to any person injured on the job site. Prompt notification shall be given to Lessor of any U.S. Occupational Safety and Health Administration reportable injuries. Licensee shall have a non-delegable duty to control its employees while they are on the job site or any other property of Lessor, and to be certain they do not use, be under the influence of, or have in their possession any alcoholic beverage, drug or other substance that may inhibit the safe performance of any work.
- J. If and when requested by Lessor, Licensee shall deliver to Lessor a copy of its safety plan for conducting the work (the "Safety Plan"). Lessor shall have the right, but not the obligation, to require Licensee to correct any deficiencies in the Safety Plan. The terms of this Agreement shall control if there are any inconsistencies between this Agreement and the Safety Plan.

Section 4. LICENSEE TO BEAR ENTIRE EXPENSE.

The Licensee shall bear the entire cost and expense incurred in connection with the design, construction, maintenance, repair and renewal and any and all modification, revision, relocation, removal or reconstruction of the Pipeline, including any and all expense which may be incurred by the Lessor in connection therewith for supervision, inspection, flagging, or otherwise.

Section 5. REINFORCEMENT, RELOCATION AND REMOVAL OF PIPELINE.

- ~~A. The license herein granted is subject to the needs and requirements of the Lessor in the safe and efficient operation of its railroad and in the improvement and use of its property. The Licensee shall, at the sole expense of the Licensee, reinforce or otherwise modify the Pipeline, or move all or any portion of the Pipeline to such new location, or remove the Pipeline from the Lessor's property, as the Lessor may designate, whenever in the furtherance of its needs and requirements, the Lessor, at its sole election, finds such action necessary or desirable.~~
- ~~B. All the terms, conditions and stipulations herein expressed with reference to the Pipeline on property of the Lessor in the location hereinbefore described shall, so far as the Pipeline remains on the property, apply to the Pipeline as modified, changed or relocated within the contemplation of this section.~~

Section 6. NO INTERFERENCE WITH LESSOR'S OPERATION.

- A. The Pipeline and all parts thereof within and outside of the limits of the property of the Lessor shall be designed, constructed and, at all times, maintained, repaired, renewed and operated in such manner as to cause no interference whatsoever with the constant, continuous and uninterrupted use of the tracks, property and facilities of the Lessor and nothing shall be done or suffered to be done by the Licensee at any time that would in any manner impair the safety thereof.
- B. Explosives or other highly flammable substances shall not be stored on Lessor's property without the prior written approval of Lessor.
- C. No additional vehicular crossings (including temporary haul roads) or pedestrian crossings over Lessor's trackage shall be installed or used by Lessor or its contractors without the prior written permission of Lessor.

- D. When not in use, any machinery and materials of Licensee or its contractors shall be kept at least fifty (50) feet from the centerline of Licensor's nearest track.
- E. Operations of Licensor and work performed by Licensor's personnel may cause delays in the work to be performed by Licensee. Licensee accepts this risk and agrees that Licensor shall have no liability to Licensee or any other person or entity for any such delays. Licensee shall coordinate its activities with those of Licensor and third parties so as to avoid interference with railroad operations. The safe operation of Licensor's train movements and other activities by Licensor take precedence over any work to be performed by Licensee.

Section 7. PROTECTION OF FIBER OPTIC CABLE SYSTEMS.

- A. Fiber optic cable systems may be buried on the Licensor's property. Protection of the fiber optic cable systems is of extreme importance since any break could disrupt service to users resulting in business interruption and loss of revenue and profits. Licensee shall telephone the Licensor during normal business hours (7:00 a.m. to 9:00 p.m. Central Time, Monday through Friday, except for holidays) at 1-800-336-9193 (also a 24-hour, 7-day number for emergency calls) to determine if fiber optic cable is buried anywhere on the Licensor's premises to be used by the Licensee. If it is, Licensee will telephone the telecommunications company(ies) involved, arrange for a cable locator, make arrangements for relocation or other protection of the fiber optic cable, all at Licensee's expense, and will commence no work on the Licensor's property until all such protection or relocation has been accomplished. Licensee shall indemnify and hold the Licensor harmless from and against all costs, liability and expense whatsoever (including, without limitation, attorneys' fees, court costs and expenses) arising out of or caused in any way by Licensee's failure to comply with the provisions of this paragraph.

SEE ARTICLE 8

- ~~B. IN ADDITION TO OTHER INDEMNITY PROVISIONS IN THIS AGREEMENT, THE LICENSEE SHALL, AND SHALL CAUSE ITS CONTRACTOR TO, RELEASE, INDEMNIFY, DEFEND AND HOLD THE LICENSOR HARMLESS FROM AND AGAINST ALL COSTS, LIABILITY AND EXPENSE WHATSOEVER (INCLUDING, WITHOUT LIMITATION, ATTORNEYS' FEES, COURT COSTS AND EXPENSES) CAUSED BY THE NEGLIGENCE OF THE LICENSEE, ITS CONTRACTOR, AGENTS AND/OR EMPLOYEES, RESULTING IN (1) ANY DAMAGE TO OR DESTRUCTION OF ANY TELECOMMUNICATIONS SYSTEM ON LICENSOR'S PROPERTY, AND/OR (2) ANY INJURY TO OR DEATH OF ANY PERSON EMPLOYED BY OR ON BEHALF OF ANY TELECOMMUNICATIONS COMPANY, AND/OR ITS CONTRACTOR, AGENTS AND/OR EMPLOYEES, ON LICENSOR'S PROPERTY, EXCEPT IF SUCH COSTS, LIABILITY OR EXPENSES ARE CAUSED SOLELY BY THE DIRECT ACTIVE NEGLIGENCE OF THE LICENSOR. LICENSEE FURTHER AGREES THAT IT SHALL NOT HAVE OR SEEK RE COURSE AGAINST LICENSOR FOR ANY CLAIM OR CAUSE OF ACTION FOR ALLEGED LOSS OF PROFITS OR REVENUE OR LOSS OF SERVICE OR OTHER CONSEQUENTIAL DAMAGE TO A TELECOMMUNICATION COMPANY USING LICENSOR'S PROPERTY OR A CUSTOMER OR USER OF SERVICES OF THE FIBER OPTIC CABLE ON LICENSOR'S PROPERTY.~~

Section 8. CLAIMS AND LIENS FOR LABOR AND MATERIAL; TAXES.

- A. The Licensee shall fully pay for all materials joined or affixed to and labor performed upon property of the Licenser in connection with the construction, maintenance, repair, renewal, modification or reconstruction of the Pipeline, and shall not permit or suffer any mechanic's or materialman's lien of any kind or nature to be enforced against the property for any work done or materials furnished thereon at the instance or request or on behalf of the Licensee. The Licensee shall indemnify and hold harmless the Licenser against and from any and all liens, claims, demands, costs and expenses of whatsoever nature in any way connected with or growing out of such work done, labor performed, or materials furnished.
- B. The Licensee shall promptly pay or discharge all taxes, charges and assessments levied upon, in respect to, or on account of the Pipeline, to prevent the same from becoming a charge or lien upon property of the Licenser, and so that the taxes, charges and assessments levied upon or in respect to such property shall not be increased because of the location, construction or maintenance of the Pipeline or any improvement, appliance or fixture connected therewith placed upon such property, or on account of the Licensee's interest therein. Where such tax, charge or assessment may not be separately made or assessed to the Licensee but shall be included in the assessment of the property of the Licenser, then the Licensee shall pay to the Licenser an equitable proportion of such taxes determined by the value of the Licensee's property upon property of the Licenser as compared with the entire value of such property.

Section 9. RESTORATION OF LICENSOR'S PROPERTY.

In the event the Licensee in any manner moves or disturbs any of the property of the Licenser in connection with the construction, maintenance, repair, renewal, modification, reconstruction, relocation or removal of the Pipeline, then in that event the Licensee shall, as soon as possible and at Licensee's sole expense, restore such property to the same condition as the same were before such property was moved or disturbed, and the Licensee shall indemnify and hold harmless the Licenser, its officers, agents and employees, against and from any and all liability, loss, damages, claims, demands, costs and expenses of whatsoever nature, including court costs and attorneys' fees, which may result from injury to or death of persons whomsoever, or damage to or loss or destruction of property whatsoever, when such injury, death, damage, loss or destruction grows out of or arises from the moving or disturbance of any other property of the Licenser.

Section 10. INDEMNITY.

- A. As used in this Section, "Licenser" includes other railroad companies using the Licenser's property at or near the location of the Licensee's installation and their officers, agents, and employees; "Loss" includes loss, damage, claims, demands, actions, causes of action, penalties, costs, and expenses of whatsoever nature, including court costs and attorneys' fees, which may result from: (a) injury to or death of persons whomsoever (including the Licenser's officers, agents, and employees, the Licensee's officers, agents, and employees, as well as any other person); and/or (b) damage to or loss or destruction of property whatsoever (including Licensee's property, damage to the roadbed, tracks, equipment, or other property of the Licenser, or property in its care or custody).

B. AS A MAJOR INDUCEMENT AND IN CONSIDERATION OF THE LICENSE AND PERMISSION HEREIN GRANTED, TO THE FULLEST EXTENT PERMITTED BY LAW, THE LICENSEE SHALL, AND SHALL CAUSE ITS CONTRACTOR TO, RELEASE, INDEMNIFY, DEFEND AND HOLD HARMLESS THE LICENSOR FROM ANY LOSS WHICH IS DUE TO OR ARISES FROM:

1. THE PROSECUTION OF ANY WORK CONTEMPLATED BY THIS AGREEMENT INCLUDING THE INSTALLATION, CONSTRUCTION, MAINTENANCE, REPAIR, RENEWAL, MODIFICATION, RECONSTRUCTION, RELOCATION, OR REMOVAL OF THE PIPELINE OR ANY PART THEREOF;
2. ANY RIGHTS OR INTERESTS GRANTED PURSUANT TO THIS LICENSE;
3. THE PRESENCE, OPERATION, OR USE OF THE PIPELINE OR CONTENTS ESCAPING THEREFROM;
4. THE ENVIRONMENTAL STATUS OF THE PROPERTY CAUSED BY OR CONTRIBUTED TO BY LICENSEE;
5. ANY ACT OR OMISSION OF LICENSEE OR LICENSEE'S OFFICERS, AGENTS, INVITEES, EMPLOYEES, OR CONTRACTORS OR ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY ANY OF THEM, OR ANYONE THEY CONTROL OR EXERCISE CONTROL OVER; OR
6. LICENSEE'S BREACH OF THIS AGREEMENT, EXCEPT WHERE THE LOSS IS CAUSED BY THE SOLE DIRECT AND ACTIVE NEGLIGENCE OF THE LICENSOR, AS DETERMINED IN A FINAL JUDGMENT BY A COURT OF COMPETENT JURISDICTION, IT BEING THE INTENTION OF THE PARTIES THAT THE ABOVE INDEMNITY WILL OTHERWISE APPLY TO LOSSES CAUSED BY OR ARISING FROM, IN WHOLE OR IN PART, LICENSOR'S NEGLIGENCE.

C. Upon written notice from Licensor, Licensee agrees to assume the defense of any lawsuit of proceeding brought against any indemnitee by any entity, relating to any matter covered by this License for which Licensee has an obligation to assume liability for and/or save and hold harmless any indemnitee. Licensee shall pay all costs incident to such defense, including, but not limited to, reasonable attorney's fees, investigators' fees, litigation and appeal expenses, settlement payments and amounts paid in satisfaction of judgments.

Section 11. ~~REMOVAL OF PIPELINE UPON TERMINATION OF AGREEMENT.~~

~~Prior to the termination of this Agreement howsoever, the Licensee shall, at Licensee's sole expense, remove the Pipeline from those portions of the property not occupied by the roadbed and track or tracks of the Licensor and shall restore, to the satisfaction of the Licensor, such portions of such property to as good a condition as they were in at the time of the construction of the Pipeline. If the Licensee fails to do the foregoing, the Licensor may, but is not obligated, to perform such work of removal and restoration at the cost and expense of the Licensee. In the event of the removal by the Licensor of the property of the Licensee and of the restoration of the roadbed and property as herein provided, the Licensor shall in no manner be liable to the Licensee for any damage sustained by the Licensee for or on account thereof, and such removal and restoration shall in no manner prejudice or impair any right of action for damages, or otherwise, that the Licensor may have against the Licensee.~~

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Section 12. WAIVER OF BREACH.

The waiver by the Licensor of the breach of any condition, covenant or agreement herein contained to be kept, observed and performed by the Licensee shall in no way impair the right of the Licensor to avail itself of any remedy for any subsequent breach thereof.

Section 13. TERMINATION.

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- A. ~~If the Licensee does not use the right herein granted or the Pipeline for one (1) year, or if the Licensee continues in default in the performance of any covenant or agreement herein contained for a period of thirty (30) days after written notice from the Licensor to the Licensee specifying such default, the Licensor may, at its option, forthwith immediately terminate this Agreement by written notice.~~
- B. ~~In addition to the provisions of subparagraph (a) above, this Agreement may be terminated by written notice given by either party hereto to the other on any date in such notice stated, not less, however, than thirty (30) days subsequent to the date upon which such notice shall be given.~~
- C. Notice of default and notice of termination may be served personally upon the Licensee or by mailing to the last known address of the Licensee. Termination of this Agreement for any reason shall not affect any of the rights or obligations of the parties hereto which may have accrued, or liabilities, accrued or otherwise, which may have arisen prior thereto.

Section 14. AGREEMENT NOT TO BE ASSIGNED.

The Licensee shall not assign this Agreement, in whole or in part, or any rights herein granted, without the written consent of the Licensor, and it is agreed that any transfer or assignment or attempted transfer or assignment of this Agreement or any of the rights herein granted, whether voluntary, by operation of law, or otherwise, without such consent in writing, shall be absolutely void and, at the option of the Licensor, shall terminate this Agreement.

Section 15. SUCCESSORS AND ASSIGNS.

Subject to the provisions of Section 14 hereof, this Agreement shall be binding upon and inure to the benefit of the parties hereto, their heirs, executors, administrators, successors and assigns.

Section 16. SEVERABILITY.

Any provision of this Agreement which is determined by a court of competent jurisdiction to be invalid or unenforceable shall be invalid or unenforceable only to the extent of such determination, which shall not invalidate or otherwise render ineffective any other provision of this Agreement.

EXHIBIT C

Union Pacific Railroad Company
Insurance Exhibit

PART 1: GENERAL INSTRUCTIONS AND REQUIREMENTS:

Prior to execution of this License, Licensee shall furnish Railroad with a certificate(s) of insurance, executed by a duly authorized representative of each insurer, showing compliance with all insurance required by this License.

All certificates of insurance and correspondence shall be addressed and sent to:

Union Pacific Railroad Company
Real Estate Department – Folder No.: 2591-66
1400 Douglas St., STOP 1690
Omaha, NE 68179-1690

All insurance policies must be written by a reputable insurance company acceptable to Railroad or with a current Best's Insurance Guide Rating of A- and Class VII or better, and authorized to do business in the state(s) in which the work is to be performed.

All policies required by this License shall provide coverage for punitive damages unless (a) insurance coverage may not lawfully be obtained for any punitive damages that may arise under this License, or (d) all punitive damages are prohibited by all states in which this License will be performed.

The fact that insurance is obtained by Licensee will not be deemed to release or diminish the liability of Licensee, including, without limitation, liability under the indemnity provisions of this License. Damages recoverable by Railroad from Licensee or any third party will not be limited by the amount of the required insurance coverage.

PART 2: SPECIFIC INSURANCE LIMITS AND REQUIREMENTS

Licensee shall, at its sole cost and expense, procure and maintain during the life of this License (except as otherwise provided in this License) the following insurance coverage:

A. **Commercial General Liability Insurance** written on ISO Occurrence form CG 00 01 12 04 (or a substitute form providing equivalent coverage) with limits of not less than:

- \$2,000,000 Each Occurrence
- \$4,000,000 Aggregate

This policy must also contain the following endorsements (which must be stated on the certificate of insurance):

- **Additional Insured Endorsement** ISO Form CG 20 26 (or a substitute form providing equivalent coverage).

The coverage provided to Railroad as additional insured shall, to the extent provided under ISO Additional Insured Endorsement Form CG 20 26, provide coverage for Railroad's negligence

whether sole or partial, active or passive, and shall not be limited by Licensee's liability under the indemnity provisions of this License.

- **Contractual Liability - Railroads** ISO Form 24 17 10 01 (or a substitute form providing equivalent coverage) showing "Union Pacific Railroad Company Property" covered by this License as the "Designated Job Site".

B. Business Automobile Liability Insurance written on ISO Form CA 00 01 10 01 (or a substitute form providing equivalent coverage) with a limit of:

- \$2,000,000 each accident.

This policy must contain the following endorsements (which must be stated on the Certificate of Insurance):

- **Designated Insured** ISO Form CA 20 48 02 99 (or a substitute form providing equivalent coverage).
- **Coverage for Certain Operations in Connection with Railroads** ISO Form CA 20 70 10 01 showing "Union Pacific Railroad Property" covered by this License as the "Designated Job Site".
- **Motor Carriers Act Endorsement** OMB Form MCS-90 (if required by law).

C. Workers Compensation Insurance. Coverage must include but not be limited to:

- Licensee's statutory liability under the workers' compensation laws of the state(s) affected by this License. Employers' Liability (Part B) with limits of at least \$500,000 each accident, \$500,000 disease policy limit \$500,000 each employee.
- If Licensee is self-insured, evidence of state approval and excess workers compensation coverage must be provided.
- Licensee shall waive all rights of recovery, and its insurers also waive all rights of subrogation of damages against Railroad and its agents, officers, directors and employees for damages covered by the workers compensation and employers liability obtained by Licensee required in this License. **This waiver must be stated on the certificate of insurance.**

D. Umbrella or excess liability Insurance. If Licensee utilizes umbrella or excess policies to meet limit requirements, these policies must "follow form" and afford no less coverage than the primary policy. If utilized, Licensee shall waive all rights of recovery, and its insurers also waive all rights of subrogation of damages against Railroad and its agents, officers, directors and employees for damages covered by Umbrella or Excess Liability obtained by Licensee required in this License. **This waiver must be stated on the certificate of insurance.**

E. Railroad Protective Liability Insurance. At all times during construction, installation, repair or removal of a pipeline or wire line Licensee or its Contractor must obtain and maintain Railroad Protective Liability insurance written on ISO occurrence form CG 00 35 12 04 (or a substitute form providing equivalent coverage) on behalf of Railroad as named insured, with a limit of not less than \$2,000,000 per occurrence and an aggregate of \$6,000,000. **A binder stating the policy is in place must be submitted to Railroad before the work may be commenced and until the original policy is forwarded to Railroad.**

EXHIBIT D
SAFETY STANDARDS

MINIMUM SAFETY REQUIREMENTS

The term "employees" as used herein refer to all employees of Licensee or its contractors, subcontractors, or agents, as well as any subcontractor or agent of any Licensee.

I. Clothing

- A. All employees of Licensee will be suitably dressed to perform their duties safely and in a manner that will not interfere with their vision, hearing, or free use of their hands or feet.

Specifically, Licensee's employees must wear:

- (i) Waist-length shirts with sleeves.
- (ii) Trousers that cover the entire leg. If flare-legged trousers are worn, the trouser bottoms must be tied to prevent catching.
- (iii) Footwear that covers their ankles and has a defined heel. Employees working on bridges are required to wear safety-toed footwear that conforms to the American National Standards Institute (ANSI) and FRA footwear requirements.

- B. Employees shall not wear boots (other than work boots), sandals, canvas-type shoes, or other shoes that have thin soles or heels that are higher than normal.
- C. Employees must not wear loose or ragged clothing, neckties, finger rings, or other loose jewelry while operating or working on machinery.

II. Personal Protective Equipment

Licensee shall require its employee to wear personal protective equipment as specified by Railroad rules, regulations, or recommended or requested by the Railroad Representative.

- (i) Hard hat that meets the American National Standard (ANSI) Z89.1 – latest revision. Hard hats should be affixed with Licensee's company logo or name.
- (ii) Eye protection that meets American National Standard (ANSI) for occupational and educational eye and face protection, Z87.1 – latest revision. Additional eye protection must be provided to meet specific job situations such as welding, grinding, etc.
- (iii) Hearing protection, which affords enough attenuation to give protection from noise levels that will be occurring on the job site. Hearing protection, in the form of plugs or muffs, must be worn when employees are within:
 - 100 feet of a locomotive or roadway/work equipment
 - 15 feet of power operated tools
 - 150 feet of jet blowers or pile drivers

- 150 feet of retarders in use (when within 10 feet, employees must wear dual ear protection – plugs and muffs)
- (iv) Other types of personal protective equipment, such as respirators, fall protection equipment, and face shields, must be worn as recommended or requested by the Railroad Representative.

III. On Track Safety

Licensee is responsible for compliance with the Federal Railroad Administration's Roadway Worker Protection regulations – 49CFR214, Subpart C and Railroad's On-Track Safety rules. Under 49CFR214, Subpart C, railroad contractors are responsible for the training of their employees on such regulations. In addition to the instructions contained in Roadway Worker Protection regulations, all employees must:

- (i) Maintain a minimum distance of at least twenty-five (25) feet to any track unless the Railroad Representative is present to authorize movements.
- (ii) Wear an orange, reflectorized work wear approved by the Railroad Representative.
- (iii) Participate in a job briefing that will specify the type of On-Track Safety for the type of work being performed. Licensee must take special note of limits of track authority, which tracks may or may not be fouled, and clearing the track. Licensee will also receive special instructions relating to the work zone around machines and minimum distances between machines while working or traveling.

IV. Equipment

- A. It is the responsibility of Licensee to ensure that all equipment is in a safe condition to operate. If, in the opinion of the Railroad Representative, any of Licensee's equipment is unsafe for use, Licensee shall remove such equipment from Railroad's property. In addition, Licensee must ensure that the operators of all equipment are properly trained and competent in the safe operation of the equipment. In addition, operators must be:
 - Familiar and comply with Railroad's rules on lockout/tagout of equipment.
 - Trained in and comply with the applicable operating rules if operating any hy-rail equipment on-track.
 - Trained in and comply with the applicable air brake rules if operating any equipment that moves rail cars or any other rail bound equipment.
- B. All self-propelled equipment must be equipped with a first-aid kit, fire extinguisher, and audible back-up warning device.
- C. Unless otherwise authorized by the Railroad Representative, all equipment must be parked a minimum of twenty-five (25) feet from any track. Before leaving any equipment unattended, the operator must stop the engine and properly secure the equipment against movement.
- D. Cranes must be equipped with three orange cones that will be used to mark the working area of the crane and the minimum clearances to overhead powerlines.

V. General Safety Requirements

- A. Licensee shall ensure that all waste is properly disposed of in accordance with applicable federal and state regulations.
- B. Licensee shall ensure that all employees participate in and comply with a job briefing conducted by the Railroad Representative, if applicable. During this briefing, the Railroad Representative will specify safe work procedures, (including On-Track Safety) and the potential hazards of the job. If any employee has any questions or concerns about the work, the employee must voice them during the job briefing. Additional job briefings will be conducted during the work as conditions, work procedures, or personnel change.
- C. All track work performed by Licensee meets the minimum safety requirements established by the Federal Railroad Administration's Track Safety Standards 49CFR213.
- D. All employees comply with the following safety procedures when working around any railroad track:
 - (i) Always be on the alert for moving equipment. Employees must always expect movement on any track, at any time, in either direction.
 - (ii) Do not step or walk on the top of the rail, frog, switches, guard rails, or other track components.
 - (iii) In passing around the ends of standing cars, engines, roadway machines or work equipment, leave at least 20 feet between yourself and the end of the equipment. Do not go between pieces of equipment if the opening is less than one car length (50 feet).
 - (iv) Avoid walking or standing on a track unless so authorized by the employee in charge.
 - (v) Before stepping over or crossing tracks, look in both directions first.
 - (vi) Do not sit on, lie under, or cross between cars except as required in the performance of your duties and only when track and equipment have been protected against movement.
- E. All employees must comply with all federal and state regulations concerning workplace safety.

NEW

DOCUMENT

O

PIPELINE CROSSING AGREEMENT

AUDIT 20581

Mile Post: 207.18, Fresno Subdivision
Location: Fresno, Fresno County, California

THIS AGREEMENT is made and entered into as of May 14, 2001, by and between **UNION PACIFIC RAILROAD COMPANY**, a Delaware corporation (hereinafter the "Licensor"), and **FRESNO METROPOLITAN FLOOD CONTROL DISTRICT (FMFCD)**, whose address is 5469 East Olive Avenue, Fresno, California 93727-2541 (hereinafter the "Licensee").

IT IS MUTUALLY AGREED BY AND BETWEEN THE PARTIES HERETO AS FOLLOWS:

Article I. LICENSE FEE

Upon execution of this Agreement, the Licensee shall pay to the Licensor a one-time license fee of **TWO THOUSAND ONE HUNDRED TWENTY DOLLARS (\$2,120.00)** and an administrative handling fee of **FIVE HUNDRED DOLLARS (\$500.00)**.

Article II. LICENSOR GRANTS RIGHT.

In consideration of the License Fee to be paid by the Licensee and in further consideration of the covenants and agreements herein contained to be by the Licensee kept, observed and performed, the Licensor hereby grants to the Licensee the right to construct and thereafter, during the term hereof, to maintain and operate only a

72-inch storm water pipeline crossing (hereinafter the "Pipeline")

- in the location shown and in conformity with the dimensions and specifications indicated on the attached print dated March 22, 2001, marked Exhibit A. Under no circumstances shall Licensee modify the use of the Pipeline for a purpose other than the above-mentioned, and said Pipeline shall not be used for any other use, whether such use is currently technologically possible, or whether such use may come into existence during the life of this Agreement.

Article III. CONSTRUCTION, MAINTENANCE AND OPERATION.

The grant of right herein made to the Licensee is subject to each and all of the terms, provisions, conditions, limitations and covenants set forth herein and in Exhibit B, hereto attached.

Article IV. IF WORK IS TO BE PERFORMED BY CONTRACTOR.

If a contractor is to do any of the work performed on the Pipeline (including initial construction and subsequent relocation or substantial maintenance and repair work), then the Licensee shall require its contractor to execute the Railroad's form Contractor's Right of Entry Agreement. Licensee acknowledges receipt of a copy of the Contractor's Right of Entry Agreement and understanding of its terms, provisions, and requirements, and will inform its contractor of the need to execute the Agreement. Under no circumstances will Licensee's contractor be allowed onto Lessor's premises without first executing the Contractor's Right of Entry Agreement.

Article V. INSURANCE

- A. The Licensee, at its expense, shall obtain the insurance described in Exhibit B-1, hereto attached. The Licensee will also provide to the Lessor a Certificate of Insurance, identifying Folder No. 1973-92, issued by its insurance carrier confirming the existence of such insurance and that the policy or policies contain the following endorsement:

UNION PACIFIC RAILROAD COMPANY is named as an additional insured with respect to all liabilities arising out of the existence, use or any work performed on or associated with the 'Pipeline' located on Railroad right-of-way at Mile Post 207.18 on the Fresno Subdivision, at or near Fresno, Fresno County, California.

- B. If the Licensee named in this Agreement is a public entity subject to any applicable statutory tort laws, the limits of insurance described in Exhibit B-1 shall be the limits the Licensee then has in effect or which is required by applicable current or subsequent law, whichever is greater, a portion of which may be self-insured with the consent and approval of the Lessor

- C. All insurance correspondence shall be directed to:

Folder No. 1973-92
Union Pacific Railroad Company
Real Estate Department
1800 Farnam Street
Omaha, NE 68102

Article VI. TERM.

This Agreement shall take effect as of the date first herein written and shall continue in full force and effect until terminated as herein provided.

Article VII. AMENDMENT TO EXHIBIT B

Section 13(b) of Exhibit B, hereto attached, is deleted.

Article VIII. SPECIAL PROVISIONS

Shoring is required per drawing 106612, copy attached as Exhibit A-1. Shoring must be

designed, checked and stamped by a professional engineer licensed in the state of California. Shoring must be submitted for approval.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date first herein written.

UNION PACIFIC RAILROAD COMPANY

By:

James C. Murray
Dir Manager Contracts

FRESNO METROPOLITAN FLOOD
CONTROL DISTRICT (FMFCD)

By:

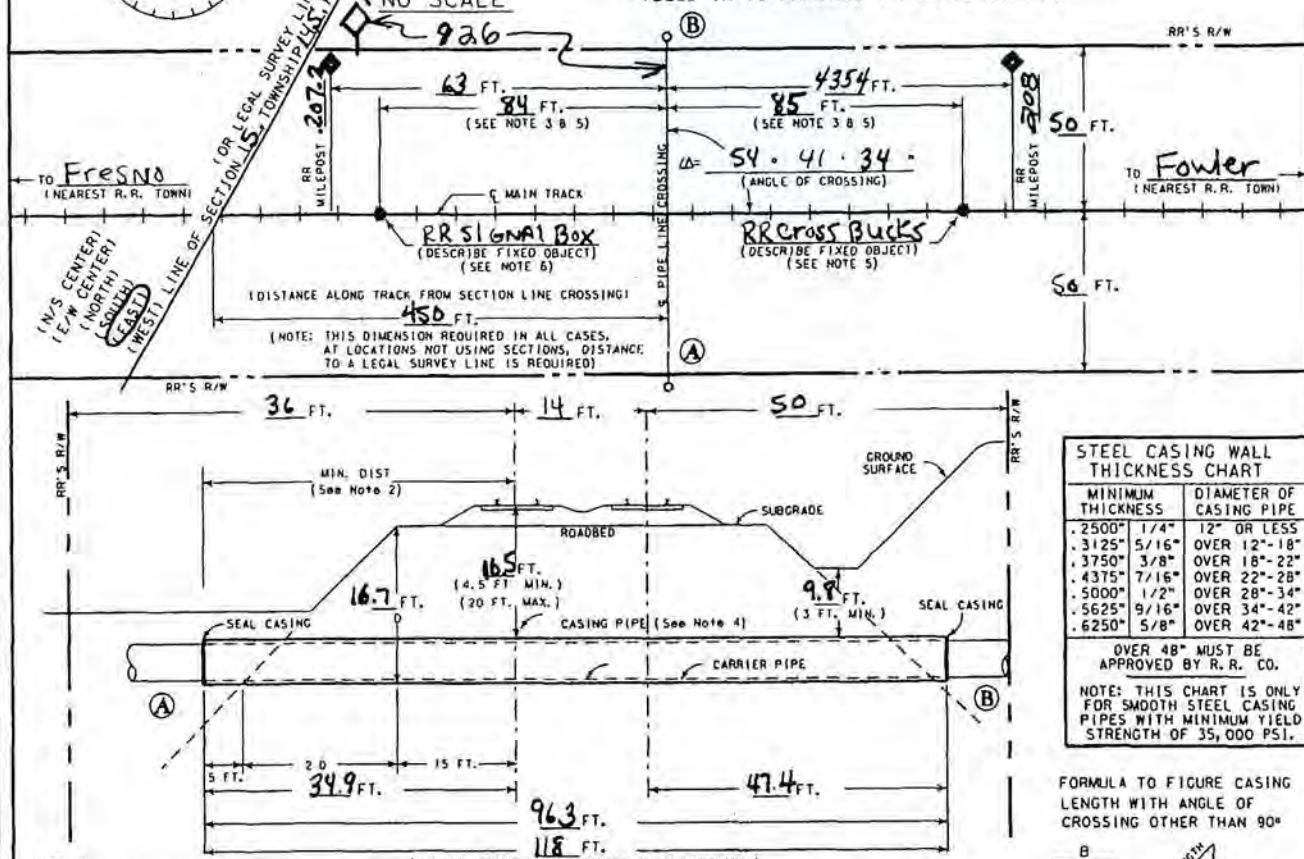
Jerry L. Kessner
Title: District Engineer

PLACE ARROW INDICATING NORTH DIRECTION RELATIVE TO CROSSING

FORM DR-0404-B
REV. 5-15-98
WWW.UPRR.COM

ENCASED NON-FLAMMABLE PIPELINE CROSSING

NOTE: ALL AVAILABLE DIMENSIONS MUST BE FILLED IN TO PROCESS THIS APPLICATION.



NOTES : (CASING LENGTH WHEN MEASURED ALONG PIPELINE.)

- 1) ALL HORIZONTAL DISTANCES TO BE MEASURED AT RIGHT ANGLES FROM $\frac{1}{4}$ OF TRACK.
- 2) CASING TO EXTEND BEYOND THE $\frac{1}{4}$ OF TRACK AT RIGHT ANGLES THE GREATER OF 20 + 20 FT., OR 30 FT., AND BEYOND LIMIT OF RAILROAD RIGHT-OF-WAY IF NECESSARY TO PROVIDE PROPER LENGTH OUTSIDE OF TRACK.
- 3) MINIMUM OF 50' FROM THE END OF ANY RAILROAD BRIDGE, $\frac{1}{4}$ OF ANY CULVERT, OR FROM ANY SWITCHING AREA.
- 4) SIGNAL REPRESENTATIVE MUST BE PRESENT DURING INSTALLATION IF RAILROAD SIGNALS ARE IN THE VICINITY OF CROSSING.
- 5) ALLOWABLE FIXED OBJECTS INCLUDE: BACKWALLS OF BRIDGES; $\frac{1}{4}$ OF ROAD CROSSINGS & OVERHEAD VIADUCTS (GIVE ROAD NAME), OR CULVERTS.
- 6) CASING AND CARRIER PIPES MUST BE PLACED A MINIMUM OF 2 FEET BELOW THE EXISTING FIBER OPTIC CABLE. ANY EXCAVATION REQUIRED WITHIN 5 FEET OF THE EXISTING FIBER OPTIC CABLE MUST BE HAND DUG.

A) IS PIPELINE CROSSING WITHIN DEDICATED STREET? YES; NO;

B) IF YES, NAME OF STREET Church Avenue

D) DISTRIBUTION LINE N/A OR TRANSMISSION LINE N/A

C) CARRIER PIPE :

COMMODITY TO BE CONVEYED Storm Water

OPERATING PRESSURE 0 PSI

WALL THICKNESS 7 3/4"; DIAMETER 72"; MATERIAL RCP;

E) CASING PIPE :

WALL THICKNESS N/A; DIAMETER N/A; MATERIAL N/A;

NOTE: CASING MUST HAVE 2" CLEARANCE BETWEEN GREATEST OUTSIDE DIAMETER OF CARRIER PIPE AND INTERIOR DIAMETER OF CASING PIPE. WHEN FURNISHING DIMENSIONS, GIVE OUTSIDE OF CARRIER PIPE AND INSIDE OF CASING PIPE.

F) METHOD OF INSTALLING CASING PIPE UNDER TRACK(S):

DRY BORE AND JACK (WET BORE NOT PERMITTED);

TUNNEL; OTHER Direct Jack and Bore

G) WILL CONSTRUCTION BE BY AN OUTSIDE CONTRACTOR? YES; NO;

H) DISTANCE FROM CENTER LINE OF TRACK TO NEAR FACE OF BORING AND JACKING PITS WHEN MEASURED AT RIGHT ANGLES TO TRACK 30' (30' MIN.)

I) APPLICANT HAS CONTACTED 1-800-336-9193,
U. P. COMMUNICATION DEPARTMENT, AND HAS DETERMINED FIBER OPTIC CABLE DOES; DOES NOT EXIST IN VICINITY OF WORK TO BE PERFORMED. TICKET NO. 10215010 / MARK Ethen

EXHIBIT "A"

(FOR RAILROAD USE ONLY)

UNION PACIFIC RAILROAD CO.

FRESNO

(SUBDIVISION)

M. P. 207.18 E. S. 6017+85'

ENCASED P/C CROSSING AT

FRESNO FRESNO CA
(NEAREST CITY) (COUNTY) (STATE)

FRESNO METROPOLITAN Flood Control District (APPLICANT)

RR FILE NO. 1973-92 DATE 7/22/01

WARNING

IN ALL OCCASIONS, U. P. COMMUNICATIONS DEPARTMENT MUST BE CONTACTED IN ADVANCE OF ANY WORK TO DETERMINE EXISTENCE AND LOCATION OF FIBER OPTIC CABLE.
PHONE: 1-800-336-9193

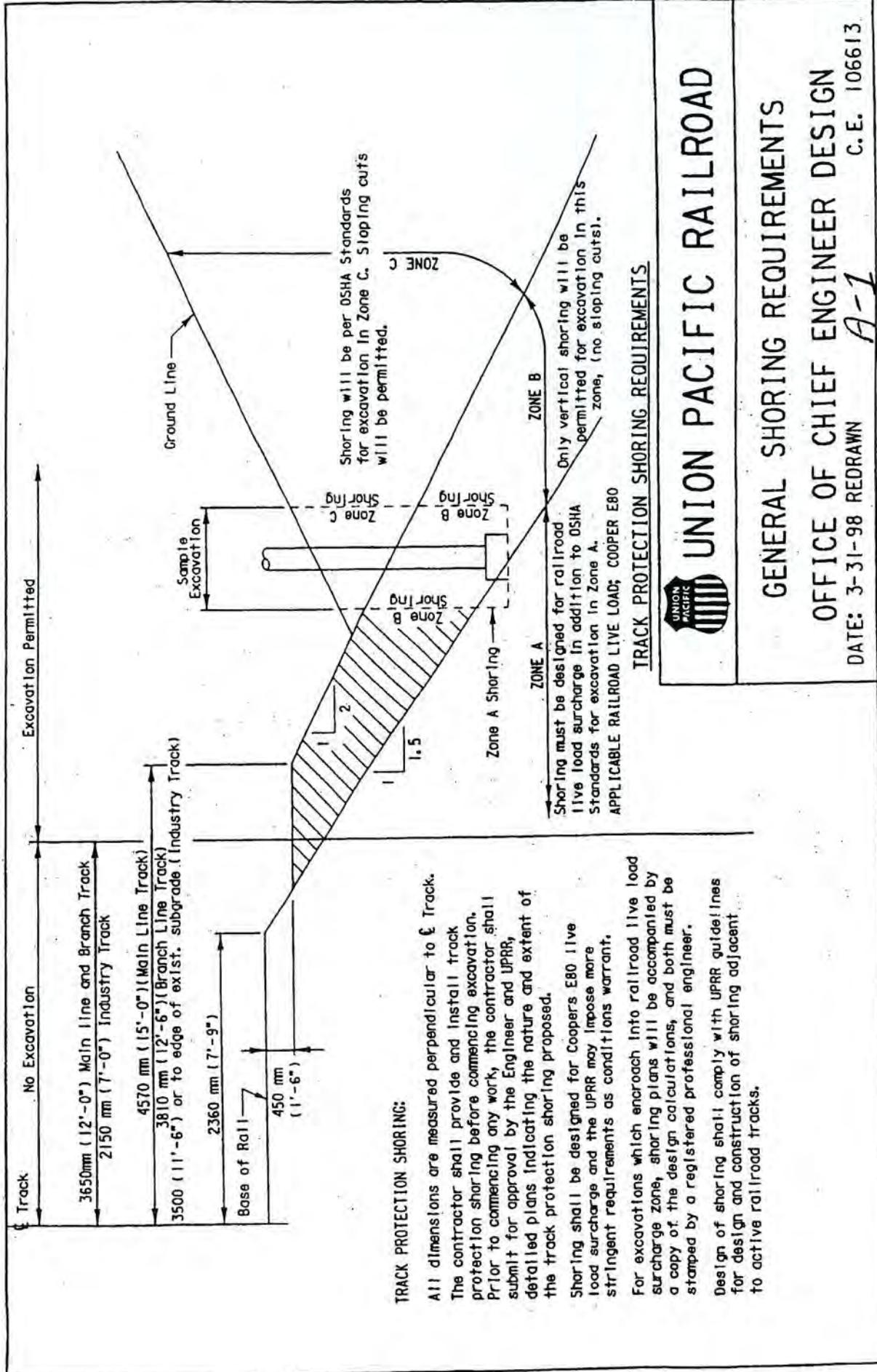


EXHIBIT B

Section 1. LIMITATION AND SUBORDINATION OF RIGHTS GRANTED.

(a) The foregoing grant of right is subject and subordinate to the prior and continuing right and obligation of the Lessor to use and maintain its entire property including the right and power of the Lessor to construct, maintain, repair, renew, use, operate, change, modify or relocate railroad tracks, signal, communication, fiber optics, or other wirelines, pipelines and other facilities upon, along or across any or all parts of its property, all or any of which may be freely done at any time or times by the Lessor without liability to the Licensee or to any other party for compensation or damages.

(b) The foregoing grant is also subject to all outstanding superior rights (including those in favor of licensees and lessees of the Lessor's property, and others) and the right of the Lessor to renew and extend the same, and is made without covenant of title or for quiet enjoyment.

Section 2. CONSTRUCTION, MAINTENANCE AND OPERATION.

(a) The Pipeline shall be constructed, operated, maintained, repaired, renewed, modified and/or reconstructed by the Licensee in strict conformity with Union Pacific Railroad Co. Common Standard Specification 1029 adopted November 1949, and all amendments thereof and supplements thereto, which by this reference is hereby made a part hereof, except as may be modified and approved by the Lessor's Vice President-Engineering Services. In the event such Specification conflicts in any respect with the requirements of any federal, state or municipal law or regulation, such requirements shall govern on all points of conflict, but in all other respects the Specification shall apply.

(b) All work performed on property of the Lessor in connection with the construction, maintenance, repair, renewal, modification or reconstruction of the Pipeline shall be done to the satisfaction of the Lessor.

(c) Prior to the commencement of any work in connection with the construction, maintenance, repair, renewal, modification, relocation, reconstruction or removal of the Pipeline where it passes underneath the roadbed and track or tracks of the Lessor, the Licensee shall submit to the Lessor plans setting out the method and manner of handling the work, including the shoring and cribbing, if any, required to protect the Lessor's operations, and shall not proceed with the work until such plans have been approved by the Vice President-Engineering Services of the Lessor and then the work shall be done to the satisfaction of the Vice President-Engineering Services or his authorized representative. The Lessor shall have the right, if it so elects, to provide such support as it may deem necessary for the safety of its track or tracks during the time of construction, maintenance, repair, renewal, modification, relocation, reconstruction or removal of the Pipeline, and, in the event the Lessor provides such support, the Licensee shall pay to the Lessor, within fifteen (15) days after bills shall have been rendered therefor, all expense incurred by the Lessor in connection therewith, which expense shall include all assignable costs.

(d) The Licensee shall keep and maintain the soil over the Pipeline thoroughly compacted and the grade even with the adjacent surface of the ground.

Section 3. NOTICE OF COMMENCEMENT OF WORK.

If an emergency should arise requiring immediate attention, the Licensee shall provide as much notice as practicable to Lessor before commencing any work. In all other situations, the Licensee shall notify the Lessor at least ten (10) days (or such other time as the Lessor may allow) in advance of the commencement of any work upon property of the Lessor in connection with the construction, maintenance, repair, renewal, modification, reconstruction, relocation or removal of the Pipeline. All such work shall be prosecuted diligently to completion.

Section 4. LICENSEE TO BEAR ENTIRE EXPENSE.

The Licensee shall bear the entire cost and expense incurred in connection with the construction, maintenance, repair and renewal and any and all modification, revision, relocation, removal or reconstruction of the Pipeline, including any and all expense which may be incurred by the Lessor in connection therewith for supervision, inspection, flagging, or otherwise.

Section 5. REINFORCEMENT, RELOCATION OR REMOVAL OF PIPELINE.

(a) The license herein granted is subject to the needs and requirements of the Licensor in the operation of its railroad and in the improvement and use of its property, and the Licensee shall, at the sole expense of the Licensee, reinforce the Pipeline, or move all or any portion of the Pipeline to such new location as the Licensor may designate, whenever, in the furtherance of its needs and requirements, the Licensor shall find such action necessary or desirable.

(b) All the terms, conditions and stipulations herein expressed with reference to the Pipeline on property of the Licensor in the location hereinbefore described shall, so far as the Pipeline remains on the property, apply to the Pipeline as modified, changed or relocated within the contemplation of this section.

Section 6. NO INTERFERENCE WITH LICENSOR'S OPERATION.

The Pipeline and all parts thereof within and outside of the limits of the property of the Licensor shall be constructed and, at all times, maintained, repaired, renewed and operated in such manner as to cause no interference whatsoever with the constant, continuous and uninterrupted use of the tracks, property and facilities of the Licensor, and nothing shall be done or suffered to be done by the Licensee at any time that would in any manner impair the safety thereof.

Section 7. PROTECTION OF FIBER OPTIC CABLE SYSTEMS.

(a) Fiber optic cable systems may be buried on the Licensor's property. Protection of the fiber optic cable systems is of extreme importance since any break could disrupt service to users resulting in business interruption and loss of revenue and profits. Licensee shall telephone the Licensor at 1-800-336-9193 (a 24-hour number) to determine if fiber optic cable is buried anywhere on the Licensor's premises to be used by the Licensee. If it is, Licensee will telephone the telecommunications company(ies) involved, arrange for a cable locator, make arrangements for relocation or other protection of the fiber optic cable, all at Licensee's expense, and will commence no work on the right of way until all such protection or relocation has been accomplished. Licensee shall indemnify and hold the Licensor harmless from and against all costs, liability and expense whatsoever (including, without limitation, attorneys' fees, court costs and expenses) arising out of or caused in any way by Licensee's failure to comply with the provisions of this paragraph.

(b) In addition to other indemnity provisions in this Agreement, the Licensee shall indemnify and hold the Licensor harmless from and against all costs, liability and expense whatsoever (including, without limitation, attorneys' fees, court costs and expenses) caused by the negligence of the Licensee, its contractor, agents and/or employees, resulting in (1) any damage to or destruction of any telecommunications system on Licensor's property, and/or (2) any injury to or death of any person employed by or on behalf of any telecommunications company, and/or its contractor, agents and/or employees, on Licensor's property, except if such costs, liability or expenses are caused solely by the direct active negligence of the Licensor. Licensee further agrees that it shall not have or seek recourse against Licensor for any claim or cause of action for alleged loss of profits or revenue or loss of service or other consequential damage to a telecommunication company using Licensor's property or a customer or user of services of the fiber optic cable on Licensor's property.

Section 8. CLAIMS AND LIENS FOR LABOR AND MATERIAL, TAXES.

(a) The Licensee shall fully pay for all materials joined or affixed to and labor performed upon property of the Licensor in connection with the construction, maintenance, repair, renewal, modification or reconstruction of the Pipeline, and shall not permit or suffer any mechanic's or materialman's lien of any kind or nature to be enforced against the property for any work done or materials furnished thereon at the instance or request or on behalf of the Licensee. The Licensee shall indemnify and hold harmless the Licensor against and from any and all liens, claims, demands, costs and expenses of whatsoever nature in any way connected with or growing out of such work done, labor performed, or materials furnished.

(b) The Licensee shall promptly pay or discharge all taxes, charges and assessments levied upon, in respect to, or on account of the Pipeline, to prevent the same from becoming a charge or lien upon property of the Licensor, and so that the taxes, charges and assessments levied upon or in respect to such property shall not be increased because of the location, construction or maintenance of the Pipeline or any improvement, appliance or fixture connected therewith placed upon such property, or on account of the Licensee's interest therein. Where such tax, charge or assessment may not be separately made or assessed to the Licensee but shall be included in the assessment of the property of the Licensor, then the Licensee shall pay to the Licensor an equitable proportion of such taxes determined by the value of the Licensee's property upon property of the Licensor as compared

with the entire value of such property.

Section 9. RESTORATION OF LICENSOR'S PROPERTY.

In the event the Licensor authorizes the Licensee to take down any fence of the Licensor or in any manner move or disturb any of the other property of the Licensor in connection with the construction, maintenance, repair, renewal, modification, reconstruction, relocation or removal of the Pipeline, then in that event the Licensee shall, as soon as possible and at Licensee's sole expense, restore such fence and other property to the same condition as the same were in before such fence was taken down or such other property was moved or disturbed, and the Licensee shall indemnify and hold harmless the Licensor, its officers, agents and employees, against and from any and all liability, loss, damages, claims, demands, costs and expenses of whatsoever nature, including court costs and attorneys' fees, which may result from injury to or death of persons whomsoever, or damage to or loss or destruction of property whatsoever, when such injury, death, damage, loss or destruction grows out of or arises from the taking down of any fence or the moving or disturbance of any other property of the Licensor.

Section 10. INDEMNITY.

(a) As used in this Section, "Licensor" includes other railroad companies using the Licensor's property at or near the location of the Licensee's installation and their officers, agents, and employees; "Loss" includes loss, damage, claims, demands, actions, causes of action, penalties, costs, and expenses of whatsoever nature, including court costs and attorneys' fees, which may result from: (a) injury to or death of persons whomsoever (including the Licensor's officers, agents, and employees, the Licensee's officers, agents, and employees, as well as any other person); and/or (b) damage to or loss or destruction of property whatsoever (including Licensee's property, damage to the roadbed, tracks, equipment, or other property of the Licensor, or property in its care or custody).

(b) As a major inducement and in consideration of the license and permission herein granted, the Licensee agrees to indemnify and hold harmless the Licensor from any Loss which is due to or arises from:

1. The prosecution of any work contemplated by this Agreement including the installation, construction, maintenance, repair, renewal, modification, reconstruction, relocation, or removal of the Pipeline or any part thereof; or
2. The presence, operation, or use of the Pipeline or contents escaping therefrom,

except to the extent that the Loss is caused by the sole and direct negligence of the Licensor.

Section 11. REMOVAL OF PIPE LINE UPON TERMINATION OF AGREEMENT.

Prior to the termination of this Agreement however, the Licensee shall, at Licensee's sole expense, remove the Pipeline from those portions of the property not occupied by the roadbed and track or tracks of the Licensor and shall restore, to the satisfaction of the Licensor, such portions of such property to as good a condition as they were in at the time of the construction of the Pipeline. If the Licensee fails to do the foregoing, the Licensor may do such work of removal and restoration at the cost and expense of the Licensee. The Licensor may, at its option, upon such termination, at the entire cost and expense of the Licensee, remove the portions of the Pipeline located underneath its roadbed and track or tracks and restore such roadbed to as good a condition as it was in at the time of the construction of the Pipeline, or it may permit the Licensee to do such work of removal and restoration to the satisfaction of the Licensor. In the event of the removal by the Licensor of the property of the Licensee and of the restoration of the roadbed and property as herein provided, the Licensor shall in no manner be liable to the Licensee for any damage sustained by the Licensee for or on account thereof, and such removal and restoration shall in no manner prejudice or impair any right of action for damages, or otherwise, that the Licensor may have against the Licensee.

Section 12. WAIVER OF BREACH.

The waiver by the Licensor of the breach of any condition, covenant or agreement herein contained to be kept, observed and performed by the Licensee shall in no way impair the right of the Licensor to avail itself of any remedy for any subsequent breach thereof.

Section 13. TERMINATION.

(a) If the Licensee does not use the right herein granted or the Pipeline for one (1) year, or if the Licensee continues in default in the performance of any covenant or agreement herein contained for a period of thirty (30) days after written notice from the Licensor to the Licensee specifying such default, the Licensor may, at its option, forthwith immediately terminate this Agreement by written notice.

SEE ARTICLE

VII

(b) In addition to the provisions of subparagraph (a) above, this Agreement may be terminated by written notice given by either party hereto to the other on any date in such notice stated, not less, however, than thirty (30) days subsequent to the date upon which such notice shall be given.

INITIAL HER


(c) Notice of default and notice of termination may be served personally upon the Licensee or by mailing to the last known address of the Licensee. Termination of this Agreement for any reason shall not affect any of the rights or obligations of the parties hereto which may have accrued, or liabilities, accrued or otherwise, which may have arisen prior thereto.

Section 14. AGREEMENT NOT TO BE ASSIGNED.

The Licensee shall not assign this Agreement, in whole or in part, or any rights herein granted, without the written consent of the Licensor, and it is agreed that any transfer or assignment or attempted transfer or assignment of this Agreement or any of the rights herein granted, whether voluntary, by operation of law, or otherwise, without such consent in writing, shall be absolutely void and, at the option of the Licensor, shall terminate this Agreement.

Section 15. SUCCESSORS AND ASSIGNS.

Subject to the provisions of Section 14 hereof, this Agreement shall be binding upon and inure to the benefit of the parties hereto, their heirs, executors, administrators, successors and assigns.

EXHIBIT B-1

Union Pacific Railroad Company Insurance Provisions For Pipeline / Wireline / Drainage License Agreements

Licensee shall, at its sole cost and expense, procure and maintain during the life of this Agreement the following insurance coverage:

A. Commercial General Liability insurance. This insurance shall contain broad form contractual liability with a single limit of at least \$2,000,000 each occurrence or claim and an aggregate limit of at least \$4,000,000. Coverage must be purchased on a post 1998 ISO or equivalent form, including but not limited to coverage for the following:

- Bodily injury including death and personal injury
- Property damage
- Fire legal liability (Not less than the replacement value of the portion of the premises occupied)
- Products and completed operations

The policy shall also contain the following endorsements which shall be indicated on the certificate of insurance:

- "For purposes of this insurance, Union Pacific Railroad payments related to the Federal Employers Liability Act or a Union Pacific Wage Continuation Program or similar programs are deemed not to be either payments made or obligations assumed under any Workers Compensation, disability benefits, or unemployment compensation law or similar law."
- The exclusions for railroads (except where the Job site is more than fifty feet (50') from any railroad including but not limited to tracks, bridges, trestles, roadbeds, terminals, underpasses or crossings), and explosion, collapse and underground hazard shall be removed.
- Coverage for Licensee's (and Lessor's) employees shall not be excluded
- Waiver of subrogation

B. Business Automobile Coverage insurance. This insurance shall contain a combined single limit of at least \$2,000,000 per occurrence or claim, including but not limited to coverage for the following:

- Bodily injury and property damage
- Any and all motor vehicles including owned, hired and non-owned

The policy shall also contain the following endorsements which shall be indicated on the certificate of insurance:

- "For purposes of this insurance, Union Pacific Railroad payments related to the Federal Employers Liability Act or a Union Pacific Wage Continuation Program or similar programs are deemed not to be either payments made or obligations assumed under any Workers Compensation, disability benefits, or unemployment compensation law or similar law."
- The exclusions for railroads (except where the Job site is more than fifty feet (50') from any railroad including but not limited to tracks, bridges, trestles, roadbeds, terminals, underpasses or crossings), and explosion, collapse and underground hazard shall be removed.
- Motor Carrier Act Endorsement- Hazardous materials clean up (MCS-90) if required by law.

C. Workers Compensation and Employers Liability insurance including but not limited to:

- Licensee's statutory liability under the workers' compensation laws of the state(s) affected by this Agreement
- Employers' Liability (Part B) with limits of at least
 - \$500,000 each accident, \$500,000 disease policy limit
 - \$500,000 each employee

If Workers Compensation insurance will not cover the liability of Licensee in states that require participation in state workers' compensation fund, Licensee shall comply with the laws of such states. If Licensee is self-insured, evidence of state approval must be provided along with evidence of excess workers compensation coverage. Coverage shall include liability arising out of the U. S. Longshoremen's and Harbor Workers' Act, the Jones Act, and the Outer Continental Shelf Land Act, if applicable.

The policy shall also contain the following endorsement which shall be indicated on the certificate of insurance:

- Alternate Employer Endorsement

D. Umbrella or Excess Policies In the event Licensee utilizes Umbrella or excess policies, these policies shall "follow form" and afford no less coverage than the primary policy.

Other Requirements

- E. Punitive damage exclusion must be deleted, which deletion shall be indicated on the certificate of insurance.
- F. Licensee agrees to waive its right of recovery, and its insurers, through policy endorsement, agree to waive their right of subrogation against Lessor. Licensee further waives its right of recovery, and its insurers also waive their right of subrogation against Lessor for loss of its owned or leased property or property under its care, custody and control. Licensee's insurance shall be primary with respect to any insurance carried by Lessor. All waivers of subrogation shall be indicated on the certificate of insurance.
- G. All policy(ies) required above (excluding Workers Compensation) shall provide severability of interests and shall name Lessor as an additional insured. Severability of interest and naming Lessor as additional insured shall be indicated on the certificate of insurance.
- H. Prior to commencing the Work, Licensee shall furnish to Lessor original certificate(s) of insurance evidencing the required coverage, endorsements, and amendments. The certificate(s) shall contain a provision that obligates the insurance company(ies) issuing such policy(ies) to notify Lessor in writing of any cancellation or material alteration. Upon request from Lessor, a certified duplicate original of any required policy shall be furnished.
- I. Any insurance policy shall be written by a reputable insurance company acceptable to Lessor or with a current Best's Insurance Guide Rating of A- and Class VII or better, and authorized to do business in the state(s) in which the service is to be provided.
- J. Licensee WARRANTS that this Agreement has been thoroughly reviewed by Licensee's insurance agent(s)/broker(s), who have been instructed by Licensee to procure the insurance coverage required by this Agreement and acknowledges that Licensee's insurance coverage will be primary.
- K. The fact that insurance is obtained by Licensee or Lessor on behalf of Licensee shall not be deemed to release or diminish the liability of Licensee, including, without limitation, liability under the indemnity provisions of this Agreement. Damages recoverable by Lessor shall not be limited by the amount of the required insurance coverage.